United States Court of Appeals

for the Second Circuit

APPENDIX

74-1550

74-1550

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NO. 74-1550

THE UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

CARMINE TRAMUNTI, et al.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

253

DEFENDANTS-APPELLANTS' JOINT APPENDIX
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UNITED STATES OF AMERICA
vs. 73 Cr. 1099
CARMINE TRAMUNTI, et al.

New York, February 27, 1974;
10.00 A.M.

Trial resumed.

(In the robing room; counsel present.)

MR. LOPEZ: This is on the record.

(We can find no better expert than your Honor as far as streets are concerned in the Bronx. Mr. Phillips has been very kind in this respect, he is willing to stipulate the distance in the Bronx between Bronxdale and Randall.

I found it on the map. I found both streets on the map and I will leave it to your Honor what he feels the stipulation calls for as far as distance is concerned.

THE COURT: It has to be a mile and a half.

MR. LOPEZ: A mile and a half?

THE COURT: Take a look.

MR. PHILLIPS: I have no objection to stipulating to the authenticity of the map itself if Mr. Lopez wants to put that in. The only thing I object to is the relevancy of the offer of the proof.

MR. LOPEZ: I appreciate that. You notice how everything is becoming irrelevant now.

I am willing to accept the stipulation from your Honor, otherwise --

THE COURT: I am not going to stipulate to that.

MR. LOPEZ: We will mark the map and we will receive it in evidence as far as the Bronx is concerned.

Another thing, your Honor:

I have asked Mr. Phillips to stipulate, and I think we are in agreement, that the Magistrate's complaint that resulted from the arrest of February 2, 1972, was dismissed on or about April 1, 1972.

MR. PHILLIPS: Right.

MR. LOPEZ: So that is going to be a stipulation.

The third matter is a little more complicated. I would like to read into the record rather than call Judge MacMahon --

THE COURT: You don't have to call Judge MacMahon to read it into the record.

MR. LOPEZ: Just the part where the Assistant United States Attorney on the sentencing of Di Napoli, and this is, of course, brought on entirely by the fact that Mr. Phillips has forced the issue by the introduction of the one million dollars. What I would like to do is to

read to the jury pages 20 and 21 and 28, statements of an Assistant United States Attorney, I think Hinkley, that he made on sentence and the sentence by Judge MacMahon.

I have markedthe pages.

MR. PHILLIPS: And the sentency by Judge MacMahon?

MR. LOPEZ: Yes, page 25:

"The Court sentences you on Indictment 72 Criminal 1021 on Count 1 to a term of three years.

"The information charging you with failure to file an income tax return to one year, the sentence to run concurrently with the sentence imposed on Criminal Indictment 72 Criminal 1021."

I would like that into the record. And also the statements by Mr. Hinkley which appear on pages 20, 21 and 28.

Mr. Phillips has said that this is the most violent type of hearsay. All during the trial I have been hearing hearsay, your Honor, from what Pat Delacio said and whatever. Here we have a certified court record, a judge of this court, an Assistant United States Attorney, and I think I have to stop the jury from speculating on the one million dollars, and I think I do this reluctantly, your Honor, but I have no other alternative here.

THE COURT: It is a kind of unusual defense, you have got to admit it.

MR. LOPEZ: It is unusual, Judge, but --

THE COURT: This case is proving to me that there are more unusual things in the world than I thought there was.

MR. PHILLIPS: What the Assistant U.S. Attorney before Judge MacMahon was doing was also speculating when he was referring to the one million dollars. That is what our objection is. We don't have the opportunity to cross-examine Mr. Hinkley to determine when he made the statement where he was referring to the one million dollars.

MR. LOPEZ: He was obviously not referring on the record to the one million dollars, because he doesn't make any mention of it. But he does say that Di Napoli, which is true, is involved in a large shylocking business.

You are going to argue on the one million dollar that Mr. Hinkley wasn't referring to the one million dollars that this money had to be the proceeds or the wherewithal of the narcotic conspiracy. I am going to argue that we have here a shylocking indictment.

That is the only way I can explain one million dollars.

THE COURT: I understand your argument. Let

me think about it.

Go ahead.

MR.ELLIS: I have two points, Judge.

I have some records of Santini Bros. establishing that Mamone moved to Florida in May of 1973. Actually, he was in Florida shopping for a home in Florida and moved in May of 1973.

The government has agreed to stipulate to the authenticity of the records so that I don't have to call a witness, but they have some problem with relevance, the fact that he moved.

I would suggest that it be a jury question if they find he was a member of the conspiracy at any point as to whether his move constituted a withdrawal.

MR. CURRAN: Your Honor, I spoke to Mr. Ellis about this, or he spoke to me, and I did indeed agree to stipulate to the fact that these records were business records. However, I said I wanted to see them before I would enter into that stipulation. And I of course am not stipulating admissibility or relevancy.

MR. ELLIS: Excuse me. I did show them to Mr. Phillips this morning.

MR. CURRAN: I don't know whether your Honor wants to hear any argument now from the government.

THE COURT: Yes, we might as well get it now.

MR. CURRAN: Without seeing the records, just based --

THE COURT: I understand. Go through the records now. Take a look at them. Don't jump until you have had a chance to look at these.

MR. CURRAN: I will examine the records, your Honor, but it seems to me it is wholly irrelevant in terms of withdrawal from a conspiracy if the person is shown to be in the conspiracy whether he moved to Florida or Chicago or Los Angeles or any place else.

As your Honor well knows, one can get from Miami to New York probably as fast as you can

get from Eastchester to New York if there some traffic tieups or railroad slowdowns from Manhattan to the Bronx, and I just think it is completely irrelevant as to whether someone moved his household effects, which don't even prove necessarily that he moved or how much time he spent in New York or in Florida or any place else.

MR. ELLIS: Your Honor, if I may, the last reference to Mamone in this record occurs in 1971, August of 1971. The jury could infer from the fact that in 1973 as he is living in Florida that he had no further participation or interest in this conspiracy, and I would suggest it is at least a jury question having nothing to do with the admissibility of the record. It is a weight question.

THE COURT: I understand.

MR. CURRAN: Can we go off the record for a second?

THE COURT: Yes.

(Discussion off the record.)

MR. CURRAN: I can go back on the record. My point is a very simple one.

The fact that some moving company records show a move of a household, apparently, from the Bronx

to Fort Lauderdale proves nothing with respect to whether a particular individual, even though he is a member of that household, moved his household from the Bronx and personally from the Bronx to Fort Lauderdale

Moreover, even if it did prove that which it does not, I submit to your Honor that it is wholly irrelevant in terms of the conspiracy charge for the reasons I stated earlier. One can operate just as easily from Florida as from any place else and, as I said, you can make New York in 2-1/2 hours from Miami.

MR. ELLIS: Your Honor, granted the possibility that that distance could be traveled in 2-1/2 hou and one could operate just as easily from Miami as they can from New York, there is nothing in this record to indicate that he did, and the fact that the Mamone household was moved to Florida, I suggest, does entitle the jury to find, if they are so inclined, that he withdrew from the conspiracy.

THE COURT: All right. I am going to let it in.

MR. ELLIS: Judge, if I may make a second application --

THE COURT: You are winning.

MR. ELLIS: No, unrelated application.

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Perhaps we can make it some other time.

I would ask your Honor to prohibit the government from referring to the Pat Dilacio statement to Barnaba that Mamone was DiNapoli's partner as being a narrative hearsay statement, just street gossip and in no way in furtherance of the conspiracy. If need be I can cite a whole line of cases beginning with Van Riper back in 13 F. 2d which precludes that kind of evidence.

Sure enough it is a co-conspirator's statement, but it was not uttered in furtherance of the conspiracy and should not be used here for its truth.

THE COURT: We are going to have to go back and take a look at the record and see how it was taken in.

MR. CURRAN: May I be heard briefly on that, your Honor?

THE COURT: Yes.

MR. CURRAN: In the first place, and certainly without conceding a statement that is not precisely in furtherance of the conspiracy is necessarily inadmissible, which I believe it is not, this particular statement occurred at a time when Barnaba was talking to Dilacio, a defendant and a co-conspirator, about acquiring more narcotics, and it came up in the context where Dilacio said

he had tried to reach, as I recall the facts, Dilacio and talked to DiNapoli's partner Butch, and then there was some further colloquy and it was established it was Butch Mamone, not Butch Pugliese, because Butch Pugliese, as your Honor recalls, was already in jail.

I think itis clearly a statement in furtherance of this very conspiracy.

MR. ELLIS: Judge, I would submit that Mr. Curran's recollection is faulty. There is absolutely no evidence in this record that Dilacio ever spoke to Mamone, that it was just some street gossip he was reciting.

THE COURT: Let me read it.

MR. ELLIS: Very good.

THE COURT: I understand your positions going through some of the contentions.

(In open court; jury not present.)

THE COURT: I received requests to charge from the government, from Mr. King on behalf of Mr. Gamba, from Mr. Dowd on behalf of Mr. Russo, from Mr. Panzer on behalf of Mrs. Ware, from Mr. Leighton on behalf of Mr. Warren Robinson, from Mr. Lopez on behalf of Joseph DiNapoli, from Mr. Rosenberg on behalf of Mr. Frank Pugliese, from Mr. Warner on behalf of Mr. Ceriale --

MR. WARNER: And, your Honor, it is my understanding that the government and I will exchange our contentions after rebuttal.

THE COURT: All right.

(Continuing) -- requests from Mr. Herbert Siegal on behalf of Mr. Tramunti and requests from Mr. Ellis on behalf of Angelo Mamone.

Are there any other requests to be handed up?

MR. FISHER: Your Honor, it is my understanding that each side is submitting the contentions and it is agreed that neither side will look at the other's, is that so?

THE COURT: Until just before the summations.

MR. RICHMAN: Your Honor, Mr. Curley will

be right in shortly with his requests.

MR. FISHER: May the record reflect, your Honor, that I just --

THE COURT: Yes. I received requests from Mr. Fisher on behalf of the defendant Christiano.

Gentlemen, the requests to charge basically should be marked, at least in my mind, as court's exhibits, the original copies thereof. I know that some people wrote them out in handwwriting. I will Xerox them. If you happen to have an extra copy would you be good enough to let the court clerk have a copy of it. I will Xerox the ones that are handwritten.

MR. SUNDEN: Judge, I have a typist that I have that is supposed to be here within a matter of minutes.

THE COURT: All right.

MR. PANZER: Your Honor, mine was handwritten but I have a photostat of it.

THE COURT: I am not going to ask for your file copy. I will get a copy.

Mr. Dowd, you have an extra one?

MR. DOWD: Yes.

MR. RICHMAN: I did not hear your Honor make reference to the copy of the requests to charge I

submitted in behalf of Benjamin Tolopka.

THE COURT: I didn't because I don't have it. I will check it out.

Gentlemen, we are starting off today a little late for various reasons. Some members of the jury -- today is Ash Wednesday -- some members of the jury requested that I make arrangements around lunchtime for them to attend church and receive ashes. I think their request is eminently fair. They have been very good about working a long time in a sequestered situation. I am trying to make those arrangements now. It is not going to take that long because there is a church next door. Some of them might want to go down to St. Paul's Chapel, so I am going to set aside a half an hour for it.

MR. ELLIS: Your Honor, I noticed Mr. Rosenberg is not here. I will cover for Mr. Pugliese.

THE COURT: All right, fine.

MR. WARREN: Your Honor, in regard to that half hour, I wonder if it would be possible, if it is going to be feasible, for Mr. Richman's witnesses to be all taken this morning, if it only means a short extension.

THE COURT: My problem is I can direct what

goes on in the courtroom, but unfortunately I have never worked out the power to direct what goes on in the vario churches, so we are kind of stuck with whatever time services are. I will do the best I can. If there are duplicate services I will send them to the later one rather than the earlier one.

MR. WARREN: The only reason I ask, your Honor, is I have some working people coming down who are working people and I was hoping to be able to fit them in, if possible.

THE COURT: We will seewhat we can do.

All right. Bring back the jury.

Mr. Lopez, I believe you want to offer a map of the Bronx.

MR. LOPEZ: Yes, your Honor. I would like to offer Defendant's Exhibit D marked for identification at this time and have it received into evidence so that the jury can refer to it.

MR. PHILLIPS: Your Honor, I would ask that this be done in an orderly fashion, when it comes time for Mr. DiNapoli --

THE COURT: All right. He was trying to shorten the time. It doesn't much matter.

MR. LOPEZ: I still have that other offer.

That will be offered at the time of Mr. DiNapoli's defense.

THE COURT: Yes.

MR. SUNDEN: Before the jury comes in could I just state, with regard to the order of summations, although they are going in reverse order of the indictment, Mr. King and I have agreed to switch places.

THE COURT: I don't care about switching places if there is agreement between two lawyers, providing I am notified before the time of the summation so that I don't embarrass somebody by calling upon them when they are not ready.

MR. LOPEZ: Your Honor, I am going to have a typewritten list for your Honor so that you will know. I am just waiting for any change.

THE COURT: All right. Thank you, Mr. Lopez.

MR. SUNDEN: I am covering for Mr. Rosenbaum.

THE COURT: All right, fine.

(Jury present.)

THE COURT: Ladies and gentlemen, I understand that some of you would like to go and get ashes today, today being Ash Wednesday. I am making

arrangements with the marshals to take care of that.

Mr. Tolopka, would you take the stand.

B E N J A M I N T O L O P K A resumed.

THE COURT: You remember that you were placed under oath yesterday?

THE WITNESS: Yes, your Honor.

THE COURT: That oath continues today.

Mr. Curran, you may inquire.

MR. CURRAN: Thank you, your Honor.

CROSS EXAMINATION CONTINUED

BY MR. CURRAN:

Q Mr. Tolopka, directing your attention to Tuesday, August 4, 1970, do you recall that day at all?

A I don't.

Q I show you one of your exhibits. I believe it is Defendant's Exhibit I in evidence. I ask you to look at your memo book, at August 4, 1970.

Does that refresh your recollection as to that date?

A It says "Day off."

Q That was a weekday, was it, do you know?

A I don't know.

Q If you worked August 3rd and August 5th would that help you at all as to what day of the week it was?

A No, it wouldn't. It should be a weekday, but I don't know for sure.

I probably could explain that though, Mr. Curran, because in eight years that I was working there I know I went sick one day. It's possible that was the day I was sick.

Q If that is the day you were sick then I take it you didn't go up to the farm?

A That's correct.

Q You stayed at home?

A Definitely.

Q At 233rd Street? Q At 233rd Street?

A Yes. A Yes.

Q By yourself?

A Yes.

Q Do you know a man named Frank Lalli, L-a-l-l-i?

A Frank? No.

Q You don't know a man named Frank Lalli?

A Frank? I don't know a man named Frank.

Q Do you know a man named Fred Lalli?

A Yes.

Q Does he have a nickname that you know of?

A Fred? No.

Q He has no nickname?

A Not that I know of.

Q Did you ever hear the name Joe Flats?

A Yes.

Q Do you know Fred Lalli by that name?

A No.

Q Who do you know by that name?

A Joe.

Q Joe who?

A Joe Lalli.

Q Is that Fred Lalli's brother?

A It is.

Q How long have you known Fred Lalli, about?

A He is my neighbor for 18 years. He lived a few doors away from me.

Q You have known him for about 18 years?

A That's right.

Q Your neighbor on 233rd Street?

A That's correct.

Q Was he also a summer neighbor upstate?

A Yes.

Q For about how long?

A A few years.

Q Could you give us any approximation?

A Five or six years, I guess.

MR. RICHMAN: Your Honor, may I have a side bar on this?

THE COURT: Yes.

(At the side bar.)

MR. RICHMAN: Judge, I wish to inform you that it appears that Mr. Curran is going to get into an area of alleged involvement of a Frank or Fred Lalli in a narcotics transaction.

MR. CURRAN: I am not.

MR. RICHMAN: All right. You are not?

MR. CURRAN: I am not.

MR. RICHMAN: I will accept that.

THE COURT: All right.

MR. RICHMAN: Because there is no such charge, nor is there a case pending, other than conspiracy.

THE COURT: It doesn't matter. It is no.

(In open court.)

BY MR. CURRAN:

Q Is Fred Lalli a good friend of yours?

A He is a friend of mine, yes.

Q A good friend?

A I don't know what you mean by good friend. A friend. I talk to the man.

Q And you know him well?

A Fairly well.

Q For 18 years?

A I know him. He is my neighbor, yes.

Q You met him in the neighborhood as a neighbor?

A As a neighbor, yes.

Q Did you ever meet him professionally when you were a police officer?

A No.

hpl Tolopka-cross

2B

Q Do you know back in the 1960s what he did for a living?

A What he did for -- I don't know what he worked at.

Q Did you ever discuss it with him?

A No. I don't discuss nobody's employment.

Q When you talk with friends you never discuss what somebody does for a living?

A No.

Q Do you have other friends that you don't know what they do for a living?

A I know a lot ofpeople I don't know what they do for a living.

Q I am talking about friends now, Mr. Tolopka, not a lot of people, neighbors and friends.

A Half of my neighbors, I don't know what they do for a living.

Q Including the ones you know for 18 years?

A That's right.

MR. RICHMAN: Your Honor, I object to this at this point.

THE COURT: I will permit it.

Q Does he live right in the same row of houses that you live in on East 233rd Street?

A He did, yes.

Q Did he live between you and Mr. Stasio?

A No. I lived between him and Mr. Stasio.

Q How often did you see him socially?

A Socially, I don't know if I ever seen him social I seen him as a neighbor.

Q Did you ever visit in each other's homes?

A Yes.

Q How often, approximately?

A Oh, I don't know. Maybe sometimes a couple of times a week.

Q Did you ever travel up-State with him?

A I don't know if he ever travelled in the same ca no. He comes up-State when I am up there, yes.

Q Do you still see him?

A Yes.

Q Socially?

A Visit him.

Q You visit with him?

A Yes.

Q I mean even right up to 1973 and up to the prese

A That's right.

Q And you have no idea what he does for a living?

A No, I don't.

Q I think you testified on direct examination that you first met John Barnaba in about 1967, is that right?

A I believe '68.

Q Did you testify on direct examination you thought it was in '67?

A I may have. I am not sure which year it was.

Q And where did you meet him?

A Up in Clinton, New York, where my sister lives.

Q Where did you meet him in Clinton, at your sister's house?

A No. In his home.

Q At his home?

A That's right.

Q Who introduced you to him?

A Mr. Lalli.

Q Is this the Fred Lalli we have been talking about?

A That's correct.

Q Was anyone else present besides you and Mr. Lalli and Mr. Barnaba?

A I believe his wife, and there were people working in the house. I don't know who they were.

Q You say his wife, you mean Mr. Barnaba's wife?

A Mr. Barnaba's wife and Mr.Lalli's wife.

Q How did you arrive at Mr. Barnaba's place there

that day?

A They went by car.

Q Who are "they"?

A Mr. Lalli, Mr. and Mrs. Lalli.

Q And you?

A And I.

Q From New York?

A No.

Q From where?

A From up-State.

Q From nearby up-State?

A Well, it's not nearby. About 40 miles, I guess or 30 miles.

Q Was it in your car?

A No.

Q Mr. Lalli's car?

A Right.

Q The three of you went to Barnaba's house?

A Well, I was supposed to go to my sister's house but they stopped there first.

Q About how long did you visit with him?

A I guess they stayed an hour or so..

Q You were there too?

A Yes.

Q So it's "we stayed an hour or so"?

A Right.

Q Then this was the first time you ever met him?

A That's correct.

Q Was he a pretty good friend of Mr. Lalli?

A I have no idea. That's the first time in my life I met the man.

Q Did they appear to be good friends? You spent an hour there.

A You don't have to be a good friend to spend an hour somewheres.

Q Did they appear to be friendly?

A Well, they talked.

Q After that you visited your sister?

A No, we never got there. We came back home.

Q You talked with Barnaba on this occasion, did you?

A I guess I said hello. I had nothing to talk to him about.

Q At that time did you know what his business was?

A He testified here that he was driving a school bus.

Q No, no. That is not my question.

At that time did you know what his business was, you?

A No. I never met the man before.

Q When you left and you talked with Mr. Lalli did Mr. Lalli tell you anything about Barnaba?

A Well, I think he said there that he is driving a school bus.

Q That was the extent of your knowledge of him?

A That's it.

Q When did you next see Barnaba?

A In 1970.

Q When?

A I believe it was in May.

Q Is this the time you talked to him about a car?

A That's correct.

Q You hadn't seen him between those --

A No. I was introduced again to him. I didn't even remember the man.

Q Let's go back. When you were introduced to him the first time up-State in '67 or '68, what name did you get to meet him by?

A I wouldn't even remember. I guess it was John.

Q No last name?

A No.

Q You are certain?

A Positive.

Q Between the time you met Mr. Barnaba up-State and the time you say you next saw him in the spring of 1970 had you ever been to the animal hospital on the Post Road?

A Yes, I guess I was, because I had taken my dog there a number of times.

Q Were you ever there at the animal hospital at any time when you were not accompanied by your dog?

A Before that? No.

Q Any time.

A You mean since then?

Q Any time.

A Yes.

Q When for the first time?

A I have no idea.

Q 1969, 1972? Approximately. I am not asking for exact dates.

A 1971, I would say.

Q That would be the first time?

A Right.

Q You are certain of that?

A Quite certain.

Q You know Dr. Saul?

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A I do.

Q When did you first meet Dr. Saul?

A When I start taking my dog to him.

Q That was when?

A Might have been '68, '69.

Q Is that when you first met Richard Forbrick?

A I didn't remember whether Richard Forbrick was there or not because I went to the vet.

Q When did you first meet Richard Forbrick?

A I met Richard Forbrick in the neighborhood by one of the neighbors. I don't know whether it was '69 or '70. But when I went to the vet I went into the vet and I didn't see Richard there that time.

Q When did you first see Richard Forbrick at the animal hospital?

A Well, when I got to know Richard Forbrick was in '71, that I knew him well enough to talk to him and everything.

Q My question was, when did you first meet him at the animal hospital.

A To my best recollection, in '71.

Q You are certain it wasn't in 1970?

A No. I didn't go there with my dog in 1970.

Q No, that is not my question.

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Are you certain you didn't meet with Richard Forbrick at the animal hospital in the year 1970?

A Quite certain.

Q Mr. Tolopka, when you were a police officer did you ever work plainclothes?

A No.

Q You went right from uniform assignments to the Detective Division?

A Yes. We worked -- it wasn't plainclothes. We worked on street conditions for a while. I worked in the 32nd Precinct. It wasn't a plainclothes detail.

Q What are the boundaries of the 28th Precinct or what were they when you worked there, I should say?

A 110th Street to 129th Street, from Fifth Avenue to -- I forget the name of the last avenue over there. It's through the park, anyway.

Q Going west from Fifth Avenue?

A Right.

Q What about the boundaries of the Fifth Precinct or Fifth Squad when you worked there?

A Well, we take in down to Pearl Street, up to East Houston, Allen Street, to Broadway.

Q When you worked in the Fifth Squad, was that regular squad detective work?

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A Yes.

Q Did you make arrests for narcotics violations in the Fifth Squad as well as in the 28th?

A I don't remember whether I made any in the Fifth or not.

Q How long were you in the Fifth Squad, about eight years?

A Eight years.

Q And you have no recollection as to whether you ever made a narcotics arrest?

A No, I don't.

Q Did you make any gambling arrests there?

A No, not that I remember.

Q I think you testified that when you worked at Yonkers you worked a little more or somewhat more than half the meet, is that right?

A That's correct.

Q And your salary I think you said was $36.50 per night when you worked?

A Right.

Q Is that correct?

A Right.

Q Was that your salary in 1970 when you worked?

A I don't remember when we start getting the $36.50

but you must have the records.

Q Do you have any records?

A No, I don't have any.

Q Do you remember at all when you got your salary increase to $36.50?

A Well, we got the union in. Now, I don't remember whether it was '70 or '71. So I am not sure.

Q What were you making before you went to $36.50, Mr. Tolopka, per night?

A What was it? I think $32.

Q Are you sure?

A I think. I may be wrong; I think it's 32.

3A

Q And this was gross?

A That was my base pay.

Q That wasn't take-home per night, was it?

A Well, they took taxes out of it.

Q They took taxes out, Social Security?

A Right.

Q And whatever else they might have withheld?

A Yes.

Q What was your net when you were getting 32?

A I have no idea.

Q Half of the meet or more that you worked -- withdraw that, your Honor, if I may.

Q About how long is the Yonkers meet in terms of racing days, the whole meet?

A Racing days, I think it's 150-some days.

Q Would it be fair to say you worked some what less than a hundred?

A I might have worked a hundred-some weeks.

Q About a hundred?

A Yes.

Q And the days you did not work, was that by choic

A Sometimes by choice and sometimes by request.

Q In other words, they could call you in or not

as they saw fit?

A They would tell me the night before. If it's very slow they cut down the men.

Q And you wouldn't get paid?

A We didn't get paid when we didn't work,no.

Q And there were times, however, when you did not work by choice?

A In '73 we didn't work by choice.

Q Were there times in 1970 when you didn't work by choice?

A No, '70 we worked as we wanted.

Q Worked as you wanted?

A Yes. We had work.

Q My question, Mr. Tolopka, in 1970 were there days when you did not work atthe meet because you did not want to work that night?

A That's right. That way, yes.

Q By choice? By your choice?

A By choice.

Q That happened?

A I used to work a week on, a week off.

Q Was that your choice?

A That's right.

Q You decided that, not Yonkers?

A That's right.

Q That is all I want to know.

When in the spring of 1970 did your family and you move up-State in the spring, summer and into the fall?

A Well, we always go up about April. Always in April to open up the water.

Q Directing your attention now to 1970 specifically could you give us an approximate time?

A I can't. We do the same thing every year.

Q In any event, you are certain it was in April?

A Quite certain, yes.

Q And your family moved up-State with you?

A My wife. My wife goes up with me.

Q Does your daughter live up there year-round?

A No, she lives here in the City.

Q And she comes up later?

A She comes up when the children get out of schoo

Q In the year 1970, when did you return with Mrs. Tolopka and take up residence again full-time in the Bronx both of you?

A Well, I don't know exactly, but I don't close th place till after voting. I vote up there. I made that my legal residence and I vote up there.

Q When did you do that?

A Oh, years ago. Several years ago. I don't know what year.

Q 19 what?

A I have no idea what year.

Q I mean, '68, '71? No recollection at all?

A No. It might have been before that. We've had the place since '65, so it was some time after --

Q How long after --

A I don't know how long, but it was after that.

Q It might have been '66?

A It might have.

Q It might have been as late as '71?

A No, no, I voted there longer than that.

Q Then after that you come back to the Bronx with your wife, with Mrs. Tolopka?

A Once we close, yes.

Q Do you own the residence that you live in up there?

A No.

Q Who owns it?

A My daughter.

Q Did she buy it?

A Yes.

Q She lives in Jordanville?

A No. It's out in the country. Jordanville is the nearest little town. This is country roads. Everybody is a half a mile, a mile apart.

Q I think she testified yesterday she lived on Hicks Road in Jordanville.

A It's not in Jordanville, it's near it. Jordanville is the nearest town. It's three and a half miles away, actually.

Q Where would you describe it to be?

A Hicks Road, Town of Warren.

Q Is it Herkimer?

A Herkimer County.

Q Herkimer County?

A Right.

Q You don't own any property up there?

A I do own land, bare land.

Q But no house?

A No.

Q When did you buy the land?

A Oh --

Q Approximately.

A '67, '68 maybe.

Q How much land did you buy?

A 60 acres.

Q How much did you pay for that?

A $4000.

Q Cash?

A Yes.

Q Was that cash from your savings account?

A It was.

Q Is that the Northside Bank or Franklin Bank?

A Possibly. I don't remember which bank.

Q You had several savings accounts?

A I had two in the City. Well, I had three, one downtown.

Q You don't remember which bank you took the $4000 out of to buy the land?

A Probably Northside.

Q Are you certain of that?

A I am not certain, no.

Q And that was $4000 that was money you saved when you were a police officer, is that correct, and thereafter?

A It's money I saved and money that accumulated through interest. You know, money grows. Every 13 years if you put 10,000 in, at the end of 26 years you'll have over 40,000.

Q That is money you had saved and had grown then, is that right?

A Possibly some of it, yes, no doubt.

Q What about the other possible part, where did that come from?

A I saved money, worked for it.

Q I said, saved and grown.

A Right.

Q You said possibly part of it. Is there some other part that didn't come about by way of savings and growth?

A It's all savings if I got it in the bank.

Q And all savings from your salary, from income you earned?

A Mine and my wife's.

Q By work?

A By hard work.

Q As a police officer?

A As a police officer and hard work.

Q Did the $4000 -- withdrawn.

Do you still own that property up there?

A I do.

Q Have you acquired any more since then?

A No.

Q That is all you own up there?

A That's it.

Q Did you help pay for your daughter's house?

A No.

Q It was entirely her money, so far as you know, or her husband's?

A Her and her husband's.

Q Is this a large house?

A Eight-room old country home.

Q Is that on RD 2?

A RD 2,yes.

Q Is that right?

A Yes.

Q The house?

A Everything, yes.

Q That is the address?

A That's correct. RD 2, Mohawk, New York. That is the Postal Zone.

Q I think you testified on direct examination, Mr. Tolopka, that in April or May of 1970, your car burned, is that right?

A That's right.

Q Was it a total loss?

A No, no, just the wiring burned on me.

Q And that occurred when you were up-State?

A Yes, right on Hicks Road.

Q Do you remember the date?

A No, I don't. It was early spring. There was still some snow there.

Q You were up there, then, with your family?

A Yes. With my wife, not my whole family.

Q With Mrs. Tolopka. I am sorry.

And this occurred on a day when you were not working at Yonkers, is that right?

A Obviously.

Q You could have driven up there after work, couldn't you?

A No. I work till midnight, so it would be the next day.

Q In any case, when you worked at Yonkers, you never went to the country if you had to go back to Yonkers the next day, did you? You never did that?

A For one day? No.

Q What kind of car was that?

A A '66 Cadillac.

Q And this was in '70?

A That's right.

Q And that car was then out of commission until when?

A Oh, it stayed in the shop about four months.

I think until about August. I think I got it in August back.

Q August of '70?

A I think that's what it was. It was late summer when I got it back.

Q You are sure you got it back?

A I'm positive I got it back.

Q Between the time it burned in April and May it was in the shop and you got it back in August or thereabouts, did you use another car to commute up-State?

A Yes.

Q What kind of car was that?

A I bought a '61 Pontiac from my son-in-law's mother.

Q When did you buy that?

A Well, when John Bonnevilledidn't bring me my car, I shopped around and finally bought that one.

Q What kind of car was John Bonneville going to get for you?

A I think he said a Chevy, it would be an old one, but it was supposed to have been a creampuff.

Q Did you order it by make?

A Did I order it?

Q Did you tell John Barnaba what kind of car you

wanted?

A No, I didn't tell him what kind. I was willing to take any kind as long as it was a good car.

Q How much did you pay for the 1976 Cadillac?

A I don't remember.

Q No idea?

A No idea, because it was a secondhand car.

Q When did you buy it?

A I believe in '69.

Q From whom did you buy it?

A From a lady by the name of Mrs. Mack.

Q Where?

A Out in Long Island.

Q And you have no recollection as to what you paid for it?

A No, I don't.

Q $500, $1000?

A I have no idea.

Q Did you pay cash for it?

A Yes.

Q Out of your savings account?

A Certainly.

Q Was it in good shape when you bought it?

A Fairly good shape. Used cars.

Q In 1971 did you have any other car besides the Pontiac and Cadillac that was in the shop?

A Did I have any? No.

Q Did your family have any up at the place that was registered in your name or Mrs. Tolopka's name?

A No, we didn't have no car up there except my cars.

Q Just the two?

A Just the two cars that I owned.

Q Was there ever a time when you had three cars at one time?

A Did I ever have three? No.

Q You and Mrs. Tolopka.

A No.

Q Did you own a 1967 Plymouth?

A I did own it. My daughter has it.

Q When did you buy that?

A 1967.

Q New.

A New.

Q Cash?

A Let me see. Trade-in and cash.

Q What did you trade in?

A I had a -- I think it was a '65 Plymouth.

Q It was a trade-in and cash

A Yes.

Q Did you have that 1967 Plymouth? Was that available in 1970?

A My daughter had that.

Q You gave it to her?

A Yes. Sold it to her.

Q Sold it to her?

A Yes.

Q She paid you for it?

A She did.

Q How much did you pay for that Plymouth when you bought it new?

A I don't remember.

Q No recollection?

A No.

Q None at all?

A None at all. I don't know -- I don't remember how much I got on my other car, even.

Q You paid a substantial amount, didn't you? I mean, a couple of thousand dollars at least?

A With the trade-in? I guess there was more than that then. Maybe $3000. I don't know what I got for the trade-in. I don't know. I paid seven, eight hundred

dollars. I don't know.

Q Cash?

A Yes.

Q Out of the savings bank?

A I would say so, yes.

Q How much damage was done to the '69 Cadillac when it burned -- the '67, I think you said,Cadillac?

A '66.

Q I am sorry. It burned in '70?

A It burned in '70.

Q It was a '66 Cadillac.

You purchased it in 1969?

A Right.

Q I am sorry.

How much damage was done to that car?

A Well, the whole harness burned inside, the motor.

Q Was it covered by insurance?

A Yes.

Q And you were reimbursed?

A Yes.

Q So in August of 1970, or thereabouts, your Cadillac was running again, is that right?

A Yes, yes.

Q And you resumed driving it?

A Yes.

Q Back to the country and to when you worked at the track, is that right?

A When I worked at the track I drove the old Pontiac.

Q Didn't you use the Cadillac to go from the track to the country?

A I had to come back home.

Q No, after the Cadillac was fixed in August or September of 1970?

A Yes, but I never drove it to the track.

Q You didn't use it there?

A No.

Q Where did you keep it?

A In the driveway.

Q At 233rd Street?

A Right.

Q And you used the other car to drive from 233rd Street to the track?

A Correct.

Q When you went back to the country you took the Cadillac?

A Correct.

Q Left the older car there in the Bronx?

A Right.

Q How long did it take you to drive from the house to the track, approximately?

A It all depends on the track. Sometimes 10 minutes, 15 minutes.

Q When you worked at the track you worked plain-clothes, right?

A Right.

Q What was your assignment there, to go through different areas of the track and see if there were any criminal activities going on, that kind of thing, improper activities?

A Right.

Q And you worked by yourself?

A No, with a partner.

Q Always with a partner?

A Yes.

Q Always?

A I would think so. I don't remember if I ever worked by myself.

Q You mean there were never times when you worked around Yonkers Raceway without a partner doing your job?

A I don't recall.

Q If you worked with a partner would that be reflected in your memo book?

A If I put it in, unless I left it out.

Q If you put it in that you were working with someone, that would mean that you were working with some-

one?

A Right.

Q If you didn't put in that you were working with someone, that would mean you weren't working with someone, correct?

A Not necessarily. I could have forgot to put it in.

Q Was your partner Mr. Logan?

A Everyone that worked there was your partner at one time or another.

Q But is your testimony that you never worked without having a partner with you?

A I don't recall. As a rule we don't get assigned alone.

Q Is it possible that there were times when you did some work alone in the track?

A Maybe in '73 when there was shortage of men.

Q How about before that?

A We always had a lot of men, so as a rule we worked with partners, unless we were sent -- there is a time. If we were sent to the paddock, we used to go alone.

Q Other than that?

A Other than that I believe we always worked part-

ners.

Q I think you testified on direct examination that you didn't know any defendants in this case?

A Never saw one of them in my life.

Q You know Richard Forbrick?

A He's not in this case.

Q You know he is a defendant in this indictment, don't you?

A I don't know. I haven't read your indictment.

Q Let me see if I can help you.

MR. CURRAN: Mr. Dilberian, can I see the indictment in this case, please?

(Handed to Mr. Curran.)

Q Mr. Tolopka, I show you the indictment in this case and I ask you to look down about three-fifths of the way down and tell me if you see Richard Forbrick's name?

MR. PICHMAN: Objection, your Honor.

A I see his name, yes.

THE COURT: I will permit it.

Q He is a defendant in this indictment, isn't he?

A If you say so. I don't know.

Q Well, now, Mr. Tolopka, you are an experienced police officer.

THE COURT: No, that is not necessary. He has seen his name in the indictment.

MR. CURRAN: Your Honor, I didn't want him to accept it just because I said so.

Q Mr. Tolopka, when you talked with Mr. Barnaba or Bonneville, as you call him, in April or May, was it, of 1970 about buying a car --

A Right.

Q -- that was the second time in your life, so far as you can remember, that you had ever seen him?

A That's correct.

Q No question about that?

A That's right.

Q Where did this meeting take place?

A By a car lot.

Q What car lot?

A It's on Boston Road, three blocks north of Eastchester Avenue.

Q How far is that from your house, about?

A A couple of miles or so, a mile. I don't know.

Q Did you know somebody at the car lot?

A Yes.

Q Who did you know there?

A I knew Mr. Fair and I knew --

Q Mr. Fair?

A Fair.

Q F-a-i-r?

A Yes. He owned the Fair Motors.

Q And is that who you went to see?

A Yes. He's the one that introduced me to John there.

Q He introduced you to John?

A Right.

Q On the lot?

A By the lot.

Q I mean right there.

A Yes.

Q And what did he say? Mr. Bonneville, or Mr. Barnaba, would take care of you?

A Mr. Bonneville was getting cars too. He told me he gets good used cars.

Q Mr. Bonneville, was he working with Mr. Fair on that lot?

A I believe he used to bring cars there. I don't know what their connection was.

Q In any event, Mr. Fair introduced you to Mr. Bonneville or Barnaba, right?

A Right.

Q After you were introduced did you recall that you met him before?

A I don't know if I recalled then or not.

Q Did he recall that he had met you? Did he remind you?

A I don't remember.

Q You don't remember that?

A No.

Q So at this point you weren't sure you had met him before?

A At that point, no.

Q When did you have a conversation with him about a car?

A Yes.

Q With Barnaba?

A Yes.

Q And Mr. Fair too?

A Mr. Fair was there, yes.

Q And what did you say?

A I wanted an old car, an old used car, my car burned up.

Q Did you give any other specifications than that?

A Any good used -- old used car.

Q Any kind of make or year?

A No. I wanted an old car so -- I didn't care what make it was.

Q And did you tell Mr. Barnaba and Mr. Fair how much you wanted to spend?

A Well, I wanted an old car. I wouldn't care whether it would cost two, three, four hundred dollars. That's what I intended to spend.

Q Did you say that?

A I probably did.

Q And I think you testified after this you gave Barnaba your name and telephone number, is that correct?

A My name and my address and my telephone number, yes.

Q You gave him all three?

A Yes.

Q Did he give you a card or anything or his name?

A No, no. He said he'd come by when he had something.

Q But he already knew your name, didn't he?

A He knew me as Benny there. I don't know if

he knew -- I don't know if he remembered me before.

Q How longafter that did he come to your house, approximately?

A I don't know whether it was a day or two later.

Q About what time of day or night was it?

A Oh, it was early afternoon.

Q Was anybody else home besides you?

A I don't know, because we spoke on the porch and then he came in. I don't know if my wife was home or not.

Q If it were April or May your wife wouldn't be home, would she?

A Well, possibly if she came back with me.

Q Oh, there were times when she came back with you?

A After we opened in April there were times she came back until we had the garden started.

Q She didn't always stay up in the country then, after she went there in the spring?

A Not always, no.

Q You don't remember whether she was there or not, is that it?

A I don't, no.

Q And you had a conversation with him, right?

A Yes.

Q Just the two of you?

A That's correct.

Q And where did this take place now, this conversation?

A Well, he met me on the porch and then inside my house.

Q He came into the house?

A Yes.

Q You invited him in?

A Certainly.

Q About how long did you talk with him, approximately?

A Oh, maybe a half an hour or so.

Q Just about the car?

A Yes.

Q For a half an hour?

A Yes.

Q And he told you that he could get a car for you?

A Yes.

Q And he said it was a cream puff, something like that?

A Yes. It would -- yes.

Q And you gave him $300?

A Yes, down payment.

Q A down payment. And he said he would bring the car the next day?

A Yes.

Q Did you give him cash or check?

A No, I gave him cash.

Q Did he tell you what kind of car he was going to get for you?

A He told me, but I don't remember what make it was.

Q Did he tell you what the mileage on it was?

A No, no, he didn't.

Q Did he tell you the year?

A I believe he probably did. I don't recall what it was now.

Q You don't remember that?

A No.

Q And you gave him the $300?

A Yes.

Q Right on the spot?

A Yes.

Q Right out of your pocket?

A I don't know if I had it in my pocket. I had it in the house. I generally don't carry that kind of money in my pocket.

Q You keep it in the house somewhere?

A Yes.

Q Where do you keep it in the house?

A Oh, I can't tell you that.

Q Maybe you can tell me this: It's not in a tin box, is it?

A I won't even tell you that.

MR. RICHMAN: Objection, your Honor.

THE COURT: Hold on. We have an objection.

MR. CURRAN: I think he answered it, your Honor.

THE COURT: I don't know. Did he answer it?

MR. CURRAN: Yes. He said, "I won't even tell you that."

THE COURT: All right. I will permit it.

BY MR. CURRAN:

Q Can you get a receipt from this man?

A No.

Q You are sure?

A Positive.

Q Did you know where he lived then?

A No, I didn't. I never knew where he lived?

Q You didn't even know his name then, did you ou?

A Well, I knew Mr. Fair and I knew Paul and their word was good enough for me.

Q And you parted with the $300 and got no receipt and he went to get the car?

A That's right.

Q And thenyou didn't see him for a good while?

A For a long time.

Q Did you go back to the lot?

A Many times.

Q Did you talk to Mr. Fair?

A Yes.

Q Did you talk to the other people you knew there?

A I talked to Paul.

Q You complained?

A I did.

Q And you looked for this man, John Barnaba?

A Over there. That's the only place I knew whre to look.

Q Did you talk to Mr. Lalli and ask Mr. Lalli

if he knew where you might find this man who took your $300?

A Possibly. I probably mentioned it to him too.

Q By the way, did you report this to the police?

A No.

Q Did you go swear out a complaint anywhere?

A No. I gave him the money.

Q He swindled you, hadn't he?

MR. RICHMAN: Objection, your Honor. That is not a swindle. It is a civil action, if anything.

MR. CURRAN: It sounds to me like --

THE COURT: Let us not argue about it.

MR. CURRAN: Sorry, your Honor.

THE COURT: All right. He didn't go and make a complaint.

Q You made no criminal complaint or civil complaint, right?

A That's right.

Q Mr. Tolopka, have you ever given anybody else more than $100 in cash as a down payment and not demanded some sort of a receipt?

MR. RICHMAN: Objection, your Honor.

THE COURT: No, I will permit it.

Q You may answer.

A Possibly. I don't recall.

Q I know it is possible. I am asking you to probe your recollection and see if you ever did it.

A My recollection, I don't recall.

Q You can't remember ever doing that except this one time, is that it?

A It's possible I did it several times.

Q Anything is possible, Mr. Tolopka, but can you recall it?

MR. RICHMAN: Objection. Argumentative, your Honor.

THE COURT: No, it is not. Let's go.

A I don't recall it.

Q You don't recall it?

A No.

Q But you recall this, though, very specifically.

A Oh, and how.

Q You will never forget it?

A Never.

Q When you did this, that wasn't, to use your language, very tight of you, was it?

A That's -- sure it's tight of me. I had

trust in them people.

Q I think you testified you were very tight. Was it tight to depart with $300 like this?

A I am very tight. I felt bad for months.

Q Pardon me?

A I felt bad for several months.

Q Until you got the $300 back?

A That's right.

Q Then it was okay?

A Then I felt better.

Q You got that back, I think you testified, after beating Mr. Barnaba up?

A We had a little fisticuffs there. I didn't beat him up. We both threw punches.

Q You threw punches with him and as a result he gave you $300?

A We grappled and he went in. He said he was going in. He might have had it on him.

Q Did you prevail?

A What do you mean by that?

Q Did you win the fight?

A I don't know if either one of us won the fight. I did get my $300 back.

Q You have a permit for a gun, don't you? You had one, didn'tyou?

A I had one till they took it away from me.

Q You had one in 1970, didn't you?

A Yes.

Q Did you have your gun with you when you had the fight?

A I don't take my gun with me unless I go to work.

Q That's the only timeyou have the gun?

A And when I go to the jewelry exchange.

Q You had it with you when you went upstate?

A I put it in the car. I didn't carry it on me.

Q So you didn't have it on you?

A No. I never carry it unless I am going to work.

Q Didyou ever sell women's clothes to anybody?

A No.

Q You are sure?

A Positive.

Q I think you testified that you next saw Mr. Mr. Barnaba in the summer of 1971 at the track.

A You mean after '70?

Q You saw him in April or May --

A When I got my money back, after that?

Q You saw him when you got your money back?

A Oh, no. I saw him. I didn't talk to him.

Q Where did you see him?

A He would be around that lot every once in a while.

Q Did you see him at the animal hospital?

A No.

Q You never saw him there?

A I never saw him inside the animal hospital, ever.

Q Did you see him with Fred Lalli?

A I don't -- unless Fred Lalli was by the lot with him. Other than that I never saw him with him.

Q Is the answer to that yes or no?

A I don't remember. I don't recall.

Q In any event, you next talked to him in the summer of 1971, is that right?

A That's right.

Q At Yonkers?

A Right.

Q Do you know a man named Paul Gregorio?

A Who?

Q Paul Gregorio.

A No.

Q Do you know anyone named Paulie the Arrow?

A No.

Q Do you know whether Richard Forbrick's son had an eye injury?

A He lost an eye.

Q Do you know when that happened?

A Well, his wife said August 31, 1970.

Q Did you know before that when it happened, did you know it back then?

A When it happened?

Q Yes. Did you know when it happened? Did you find out about it when it happened?

A I eventually found out about it. I think my neighbor told me about it.

Q Is it your testimony, Mr. Tolopka, that invariably when you have days off from the track, more than one day off, at least, and your family, Mrs. Tolopka, is upstate, you go upstate?

A That's true.

Q And that would be in 1973, right?

A Yes, '73 I went up there also.

Q I think you testified that in 1973 some time Mr. Barnaba came by and had a conversatin with you about a watch. Do you remember that?

A Yes.

Q Do you remember when that was?

A Well, it was either -- I brought my wife home from the hospital. We came from upstate. She took sick up there. So I believe I brought her back Decoration Weekend. So it was some times around then.

Q And that occurred in the Bronx, right?

A In the Bronx, when he came to my house, when he ca[illegible] yes. yes.

Q Your house in the Bronx?

A Yes. You have the tape of it, Mr. Curran, so you could check it.

Q Don't you have the tape of it?

A No, I don't.

Q Doesn't Mr. Richman?

A I don't know. He had tapes, yes.

Q Didn't Mr. Richman tell you he had the tape some time ago?

MR. RICHMAN: Objection, your Honor. It's argumentative.

MR. CURRAN: Your Honor --

THE COURT: No, no. I will permit it.

Q Let's talk about that tape, Mr. Tolopka. Didn't Mr. Richman tell you he had that tape some time ago?

MR. RICHMAN: Objection. That is hearsay. You want me to testify, I will be glad to testify.

THE COURT: It is not a question of that. The entire thing was opened up by Mr. Tolopka's volunteering.

Q You may answer. You may answer.

A He said you can't hear nothing on it.

Q But you had the tape, didn't you?

A There is nothing on it. I didn't have it.

Q That is the tape that was given to Mr. Richman by the government, wasn'tit?

MR. RICHMAN: Objection, your Honor.

A I don't know.

THE COURT: If he knows.

A I don't know.

Q You don't know that?

A I don't know.

Q Where did Mr. Richman get it?

A I don't know. You will have to ask Mr. Richman.

Q You have no idea?

A No.

Q You are sure?

A I don't know who gave it to him.

Q Do you recall being at your home in the Bronx from May 26 to June 12, 1973?

A Probably. I am not sure if I was home all the time.

Q In any event, you did spend some time in the Bronx in June of '73?

A Yes. I brought my wife back.

Q The night you saw Barnaba in June of '73 you weren't working at the track, were you?

A No, I wasn't working.

Q When did you first know Barnaba's name to be Barnaba?

A Well, in here, in the courtroom.

Q Not before that?

A No.

Q I think you testified on direct examination, Mr. Tolopka, that you bought a car in November of 1970, is that right?

A That's right .

Q If I recall your testimony correctly, you said you registered it on November 3, 1970, is that correct?

A I think that's the date. I am not sure. I looked at the papers. I am not sure right now.

Q That is the date you testified to yesterday, is that right?

A I said I thought it was November 3rd in the papers.

Q You said you thought it was?

A Yes.

Q Yesterday?

A Yes.

Q Was this to replace the car that was burned?

A Yes. I turned that one in.

Q It was operating when you turned it in, it had been fixed?

A Yes, but it was giving me some trouble. It didn't work right after it burned.

Q In 1970, Mr. Tolopka, did you have any income from narcotics transactions?

A I never had any income from no narcotics transaction. I never had any narcotic transaction.

Q That includes 1970?

A That includes ever.

Q The date November 3, 1970 that you registered the car, or testified you registered it, the new car --

A Yes.

Q -- does that date stick in your mind or did you refresh your recollection from some documents?

A I went in the car and looked.

Q What did you look at?

A At when I registered that car.

Q When did you do that?

A When did I do that?

Q When did you go in the car and look?

A Oh, sometimes ago. This year.

Q What did you look at in the car?

A At the registration, the tax sticker.

Q Was that on the windshield?

A No, no.

Q In the glove compartment.

A No. I have it in the trunk.

Q That showed you when you first registered it?

A When I paidthe tax on it.

Q You bought this car before you got the $300 back from Barnaba, didn't you?

A Yes.

Q By the way, what kind of car was this?

A This is a '70 -- no -- a '69 Cadillac.

Q A '69 Cadillac?

A Yes.

Q What color, tan?

A Tan.

Q A coupe?

A Coupe DeVille?

Q Who did you buy it from?

A From Mr. Fair.

Q Mr. Fair?

A Yes.

Q That is the same Mr. Fair who introduced you to Barnaba?

A Yes.

Q What is Mr. Fair's first name?

A I don't know. Everybody called him Mr. Fair.

4B

Q How much did you pay for this car, this 1969 Cadillac?

A I gave him my car and I don't remember exactly what I paid for it.

Q No recollection?

A No.

Q 1000, 2000, three?

A Probably 2000 or so and my car.

Q 2000 cash?

A I gave him a check, yes.

Q A check?

A Yes.

Q And who was that check payable to?

A I believe to him. I don't remember exactly who I made it out to.

Q This was where? What is the name of this lot?

A It's -- I don't know the name of it. It's a lot three blocks north of Eastchester Avenue and Boston Road.

Q And the name of it you don't know?

A It's got a different name now. It was P & J.

Q When you bought the Cadillac it was P & J?

A I believe so.

Q Mr. Fair still there?

A I haven't been there in a couple of years, I

guess.

Q Can I ask you what Mr. Fair's first name was?

A You did.

Q What was it?

A I don't know. I don't know his first name.

Q Did you make a down payment on this and Mr. Fair bring it at a later day or did you just get it right on the spot, drive in and get it?

A No, no. When he had got the car I turned mine over to him.

Q And the $2000 or so in cash, that came out of your savings account?

MR. RICHMAN: Objection. The testimony was it was not cash, it was a check.

MR. CURRAN: I am sorry. I withdraw it.

Q That was a checking account?

A I think it was a Cashier's check.

Q From a savings bank?

A I would think so. I am not sure.

Q You took the cash and got a check?

A Probably, yes.

Q So it probably did come out of your savings account?

A I would think so.

Q Do you remember which one?

A No, I don't.

MR. CURRAN: May this be marked Government's Exhibit 101 for identification.

xx (Government's Exhibit 101 marked for identification.)

Q Mr. Tolopka, I show you Government's Exhibit 101 for identification. It consists of four documents.

I ask you to look at the last document -- it's an insurance form -- look and see if this is your handwriting on the lefthand side and over to the right above the signature.

A Yes.

Q Looking at that, does that refresh your recollection at all as to when you purchased this 1969 Cadillac?

A Well, it's an insurance policy, 10-8-70, yes.

Q That would be October 8, 1970?

A That would be.

Q So you apparently purchased it some time before that?

A I apparently didn't register it.

Q Let me now show you the next document in the grouping going from the rear and point to a signature there. I ask you if that is your signature.

A No, it don't look like mine.

Q That is not your signature?

A No.

Q You are certain?

A That don't look like my signature.

Q Look at it carefully.

A I am looking at it carefully. That's not my handwriting.

Q You are certain?

A I am quite certain.

Q The date up here, date of disposition, 10-3-70, that is not in your handwriting either?

A That's not my handwriting.

Q Let me ask you this, Mr. Tolopka: did you ever see this document before, the third one, the one we just talked about?

A None of this is my handwriting.

Q No, I didn't ask you that. I asked you if you have ever seen the document before.

A This here document?

Q Yes, sir.

A I don't remember seeing this.

Q Is it possible you have seen it before?

MR. RICHMAN: Objection, your Honor. Anything

is possible.

THE COURT: Anything is possible.

MR. CURRAN: Your Honor, I think --

A None of this is my handwriting.

THE COURT: Have you ever seen the document?

Q Have you ever seen it before?

A I don't recall ever seeing it.

Q Do you deny ever seeing it before?

MR. RICHMAN: Objection, your Honor.

A I don't know.

THE COURT: He doesn't know.

Q You don't know?

A No.

THE COURT: One way or the other, it comes out the same way.

Q Is that your signature, pointing now to the third document?

A That is.

Q No question about that?

A No question about that.

Q This form which is the top document, which we haven't talked about yet, is that in your writing?

A Yes, it's in my writing.

Q No question about that?

A That's right.

Q No doubt about it?

A Right.

Q The name on here, without mentioning it, did you ever hear that name before?

MR. RICHMAN: Objection, your Honor.

THE COURT: He is not going to mention it.

A No, unless --

Q It rings no bell?

A Unless that is the man that owned the car that Mr.Fair got it from.

Q It rings no bells with you, though?

A No.

Q You never met him?

A No, no.

MR. CURRAN: Would your Honor bear with me one moment.

THECOURT: Yes.

(Pause.)

MR. CURRAN: Your Honor, may this document be marked Government's Exhibit 102 for identification.

(Government's Exhibit 102 marked for identification.)

BY MR. CURRAN:

Q Mr. Tolopka, I show you a document, a Xerox

copy, consisting of two pages. It's marked Government's Exhibit 102 for identification.

I ask you to look at the document first and tell me if the document refreshes your recollection as to your Police Department salaries per year. These are gross salaries.

A Well, I see what it says on there, yes, but that don't recollect my memory as to whether that is so or not.

Q Do you know whether the salaries that appear on that document are accurate?

A I don't know.

Q In terms of view?

A I don't know.

Q You don't know?

A I don't know. I thought we were making more.

Q Would you deny their accuracy?

MR. RICHMAN: Objection, your Honor.

THE COURT: He doesn't know. How can he deny it?

A I don't know.

Q You thought you were making more than appears --

A Yes, I did, because I get $7400 pension and we generally get half, plus the four years extra that I

worked.

Q The pension has gone up since you retired a little bit, hasn't it?

A I hear it's gone up -- the salaries have gone up.

Q No, your pension. Hasn't it gone up since 1966?

A It's 7400.

Q Didn't you get some cost-of-living increases since '66?

A No, I do not get any cost-of-living increases.

Q And you got none?

A I don't know.

Q Ever?

A You don't get it till you're 62.

Q You never got any?

A No, no cost of living.

Q These figures then, you can't say whether they are right or not?

A I can't say. I can't say.

MR. CURRAN: No further questions, your Honor.

THE COURT: All right. Mr. Richman.

MR. RICHMAN: I have redirect, your Honor. Do you want to take a break?

THE COURT: How long do you think you will be?

A little while?

MR. RICHMAN: Yes, a little while.

THE COURT: All right. Let's take a break.

(Jury left the courtroom.)

THE COURT: How long do you think you will be?

MR. RICHMAN: I don't know, your Honor. Just give me a moment with Mr. Curran.

THE COURT: I assume you want to take a look at the exhibits.

MR. RICHMAN: Yes.

THE COURT: Anybody else have any requests that you were late on?

All right. Take ten.

(Recess.)

5A

(In open court; jury present.)

THE COURT: All right, Mr. Richman.

MR. RICHMAN: I have no further questions, your Honor.

THE COURT: All right. Step down, Mr. Tolopka. Wait a minute.

Any defense counsel wish to cross-examine?

All right. Step down, Mr. Tolopka.

(Witness excused.)

THE COURT: Call your next witness.

MR. RICHMAN: I would call at this time Mr. Frank Malerba.

F R A N K M A L E R B A, called as a witness on behalf of the defendant Tolopka, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RICHMAN:

Q Mr. Malerba, where are you presently employed?

A I work at Yonkers Race Track.

Q And is it a fact that you are Mr. Tolopka's supervisor or boss?

A I'm a supervisor over the agents and I handle the cops, too.

Q How long have you been working there?

A Since I retired from the Police Department. About -- past 10, I am going on the 11th year.

Q And Benjamin Tolopka works for you? Essentially you control where he is going to be on a given day, right?

A Benny -- Mr. Tolopka has been working at the track, I believe, since 1966.

Q I direct your attention to the year of 1970. If you recall, you received a subpoena for certain records of the track?

A Well, I have records of the track.

Q Will you produce those records, sir?

A These are records and payroll sheets and et cetera.

Q I direct your attention to August of 1970.

Specifically, the latter part of August of 1970, can you please tell us what days Ben Tolopka worked?

A Yes. Well, we will start from the 12th. Is that all right?

MR. CURRAN: Your Honor, may the record show the witness is reading from the records. I have no objection to the introduction of the records, but I think we should do it one way or the other.

THE COURT: All right. Let him read from the

records.

Q Mr. Malerba, are these records kept in the regular course of business?

A Yes, these records are kept in the course of business. I can testify without the records. I don't need to look at the records.

THE COURT: No, look at the records.

Q Please do look at August of 1970.

A Well, August, 1970 -- where do you want me to start, the whole month of August?

Q The latter part of August.

A All right. On the 12th, he didn't work on a Monday. That was the week-end of the 12th, so he didn't work on the 10th, the 11th and the 12th.

Q And when did he work?

A He worked earlier, three days earlier than that, taking a Sunday out, so that would be he worked maybe the 7th, 8th and 9th or the 6th, 7th and 8th.

Q The whole latter part of August.

A The following week, on the 19th, he worked on a Monday, Tuesday and Wednesday, and then he was off Thursday, Friday, Saturday, Sunday, Monday, Tuesday and Wednesday.

Then on the 26th would be the 27th he worked and he ends up on September the 2nd.

In other words, he worked one week on, one week off, and his particular week always started on a Thursday and ended on a Wednesday.

Q Very well. Thank you.

I direct your attention to October of 1970.

A Well, October, the same thing he had. He had six days work, six days off.

Q When did the meet end in October, if you recall?

A Usually I think the 15th.

Q By the date, can you tell us what dates he worked and what dates he didn't?

MR. CURRAN: Are you talking about October?

MR. RICHMAN: Yes.

THE COURT: October of 1970.

A The whole month of October?

THE COURT: Yes.

Q Specifically the first half of October.

A He worked the 5th, 6th, 7th, so then I have to go back, 2nd, 3rd and 4th of October.

Q Very well. And the meet ended on the 17th, did it not?

A The meet ended on the 17th.

Q What were Ben Tolopka's hours?

A Well, it all depends. We had different tours

there. But the only way I could -- some of the records are destroyed,but he has a memo book. I was going to bring the memo books in here,but I think the District Attorney's office have the memo books.

We had different tours at the track. We had tours 2 to 8 and we had tours 12 to 6 and we had tours 6 to 12.

Q Mr. Malerba, I put two memo books on your desk. Can you look at those memo books with relation to the end of August, 1970?

A He worked all 6 to 12 tours.

Q 6 to 12 tours? And what time would he check in?

A Well, he was one of the early men. He usually comes in at 5.

Q So you would say that he would be there from 5 to midnight?

A Approximately midnight.

Q And do you know any time when he left early during 1970?

A No. The best that he would leave, he'd have to leave after the 9th race.

Q What time would that be?

A Well, usually it depends on the day, especially on a Saturday. If it's a Saturday it would be almost about

12 o'clock. Week days it all depends. If there is a storm it may be 11.15, 11.20, 11.30. It depends the crowd and the weather we have.

Q By the say, did Ben Tolopka always work with a partner?

A I don't get you.

Q Did he work with a partner in 1970?

A Oh, he had to work with a partner.

Q At all times?

A At all times.

Q Whether it appears in the book or not, is that right?

A He always worked with a partner. When I would have charge of the men, I can use him for brawn and I would usually -- I have to put him with someone. Put him with an older man.

Q Mr. Malerba, you know Ben Tolopka for many years, do you not?

A I know Mr. Tolopka since 1948.

Q You were both detectives in the New York City Police Department?

A That's correct.

Q You knew Mr. Tolopka's reputation as a member of the Police Force, did you not?

A I did.

Q Especially for honesty?

A I would say he's an honest man and from different people I meet he's got a reputation that I could swear that I don't -- anybody I ever met, he never framed anybody. He got him for what he got him, and that was it.

Q And you would say he was a good cop, would you not?

A One of the best in the City of New York. I would rate him, out of four or five, he is one of the highest decorated guys in the country.

MR. RICHMAN: I have no further questions.

THE COURT: All right, Mr. Curran.

CROSS EXAMINATION

BY MR. CURRAN:

Q Mr. Malerba, could you tell us again, please, according to the official track records, the documents on your right there -- not the memo books -- what days in August Mr. Tolopka worked at the track? That is August of 1970. I am sorry.

A All right. He worked August the 3rd -- do you want me to give you the whole month?

THE COURT: Yes, go ahead, give us the whole month.

A All right.

He worked August the 3rd, the 4th he didn't work, he worked on the 5th. Then he was off on the 6th, 7th, 8th, 9th, 10th, 11th and 12th.

Q May I stop you for just a second, Mr. Melerba.

He was off Thursday, August 6th, Friday, August 7th, and Saturday, August 8th, is that correct?

A That's right.

Q According to those official records ?

A That's right.

Q All right, sir.

And he was also off the 9th, is that right?

A Yes.

Q That was a Sunday, wasn't it?

A Well, I wouldn't know what it was.

Q He was off the 10th and the 11th, you said?

A He was off the 10th, the 11th -- the 12th he was off anyway. Up to the 12th.

Q He was off from the 6th through the 12th, is that correct?

A That's correct.

Q No question about that, according to those records?

A That's correct, no question about that.

Q That means he didn't work there those days?

A No.

Q All right, sir. Now tell us when he resumed working, please.

A Then he worked there the 13th, the 14th, the 15th; the 16th is a Sunday; he worked the 17th, he worked the 18th and he worked the 19th.

Q So he worked from Thursday through Wednesday with the exception of Sunday?

A That's right.

Q In this week?

A In that particular week that ends on the 19th.

Q All right, sir. Did he work the 20th?

A No, he didn't work on the 20th.

Q Mr. Malerba, may I stop you right there, please. I don't mean to interrupt you.

The 20th was a Thursday, wasn't it?

A That's right.

Q Did he work the 21st, Friday?

A No.

Q How about the 22nd, Saturday?

A He didn't work.

Q He did not work?

A That's correct.

Q The 23rd was Sunday. I assume he didn't work?

A No.

Q The 24th, Monday, did he work?

A No.

Q The 25th, Tuesday?

A No.

Q When did he start working again?

A That would be on a Thursday.

Q Wednesday? Thursday?

A That would be on a Thursday, so that would be the 27th.

Q He didn't work Wednesday, the 26th, either, then?

A That's correct.

Q He started working on Thursday, the 27th?

A Right.

Q And he worked the 28th?

A Right.

Q And the 29th?

A Right.

Q And the 30th was Sunday?

A That's correct.

Q Did he work the 31st?

A Yes.

Q And then going into September, he worked the 1st,

the 2nd?

A He worked up to the 2nd, then he is off a week. He is on one week --

Q One week off and one week on runs Wednesday --

A To Thursday.

Q Thursday to Wednesday?

A He gets through on a Wednesday and the following week he comes in on a Thursday, then he ends that week on a Wednesday and he takes a week on, a week off.

In other words, on the payroll it shows he gets three days a week.

Q So there are many week days in August when he was not working, like Mondays, Tuesdays?

A Oh, yes.

Q Thursdays and Fridays, too?

A It would fifty-fifty.

Q And these dates that you are giving us, that is from the official race track records?

THE COURT: Do you want to mark them?

MR. CURRAN: Yes, your Honor.

THE COURT: Mr. Malerba, I assume you will get a copy back.

A This is what I am reading from. This is what I am reading from here (indicating).

MR. CURRAN: May we mark this and then substitute a copy and return a copy to Mr. Malerba?

MR. RICHMAN: I have no objection to that, your Honor.

THE COURT: Okay, fine. Does anybody object to the time records?

MR. CURRAN: Mark these as Government's Exhibit 103 for identification.

THE COURT: I don't care whose exhibit it is. Fine, 103 for identification. If there is no objection, we will put it in evidence.

MR. RICHMAN: No objection.

THE COURT: Apparently there is no objection. Put it right in evidence.

(Government's Exhibit 103 was received in evidence.)

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THE COURT: By the way, for my own edification, Mr. Malerba, is the race track open on Sunday?

THE WITNESS: No, sir.

THE COURT: Okay. I don't know.

BY MR. CURRAN:

Q Mr. Malerba, when the men work at the track the 6-to-12 shift or hours--those are the hours that Mr. Tolopka worked, is that right?

A That's right.

Q Do they work right through or do they get any break?

A We get a coffee break maybe 15 minutes, 20 minutes.

Q Fifteen-, 20-minute break?

A Yes. They come up and when they come up for coffee I make the coffee so they sit down with me and they8 have their coffee and I chase them out again.

Q And that's it?

A What you say?

Q They do that all the time?

A Yes.

Q And I think it was your testimony that the officers like Mr. Tolopka, they wear plain clothes, don't they?

A. That's right.

Q And they always work together with a partner?

A Yes. Well, he always has a partner.

Q Without exception?

A I don't get you.

Q Without exception, always?

A Always a partner, yes. I would put an old man alone so he could just observe and report, then I send a little more stronger team out.

Q You require the men to keep memo books?

A That's correct.

Q And is the fact of the partner supposed to be reflected in the memo book entry?

A Well, the partner would put down they worked with him.

Q That is what they are supposed to do, though?

A That's right.

Q I mean that is part of your requirements?

A That's right.

Q And I think you testified -- correct me if I am wrong, please -- that on weekdays the ninth race would be over sometimes 11:15, 11:30?

A If it's a stormy day, you know. You got to take into consideration the crowd.

Now, you say you get a crowd of 20,000, forget it, we are up there almost until 12 o'clock.

Q And Saturday nights it would be later?

A Oh, Saturday night it would be real late; sometimes 12:30, quarter to 1.

Q Because it is more crowded?

A If you got a storm and maybe you got eight, nine thousand people, you can figure 11:20, 11:15.

Q Mr. Malerba, I think you also testified that Mr. Tolopka had an excellent reputation for honesty in the Police Department.

A That's right.

Q And in your judgment, from what you had heard, he had been an excellent police officer, is that fair?

A Well, we were both -- he worked in the adjoining precinct from me and occasionally sometimes we worked together on a homicide, and I knew he was very active. In fact, though I have more time than him, he was a detective a long time before I was a detective.

In 1953 I think we said he was the highest in the city, and I'm a hustler and I went out and I said I got to beat his record and I went after him.

Q How did you do?

A Well, I got out with 44 citations and two

medals?

A You beat him by three.

A Well, I don't know. I thought he had more.

Q But you were familiar with his reputation for honesty and effective work in the Police Department, weren't you?

A I was.

Q And that was an excellent reputation?

A That's right.

Q And you discussed him with other police officers he was well known?

A Right.

Q Have you heard, Mr. Malerba, that he is a friend of a man named Fred Lalli, who has been arrested for policy --

MR. RICHMAN: Objection, your Honor.

Q -- and has been --

MR. CURRAN: Your Honor, I didn't finish the question.

MR. RICHMAN: There was a discussion at the side bar on that, your Honor.

THE COURT: Go ahead, finish the question.

Q -- who has been arrested for policy in the 1960s and has been charged with violating the federal

narcotics laws?

MR. RICHMAN: Your Honor, I would like to have a conference at the side bar at this time.

Q The question simply is have you heard that?

A No, I haven't heard anything like that.

Q If that were the case --

MR. RICHMAN: I move to strike any further comments concerning that, your Honor.

THE COURT: Yes, I will sustain it.-

Q May I ask you this, Mr. Malerba: Did you ever socialize with Mr. Tolopka?

A What?

Q Did you ever spend any time visiting his home or he visiting your home or anything like that?

A No. I make it a business, I never intermingle with cops or cops' wives.

MR. CURRAN: Your Honor, with that excellent advice I have no further questions.

THE COURT: All right.

Do you have any redirect, Mr. Richman?

MR. RICHMAN: Yes.

REDIRECT EXAMINATION

BY MR. RICHMAN:

Q I would ask you, Mr. Malerba, to recheck your

records as to the days of the week.

MR. RICHMAN: Withdrawn.

I have no redirect, your Honor.

THE COURT: All right, fine. Go ahead, Mr. Malerba, step down.

MR. RICHMAN: Thank you, sir.

(Witness excused.)

THE COURT: All right, ladies and gentlemen, this is the afternoon session.

MR. RICHMAN: Your Honor, may I approach the bench for a moment?

THE COURT: Let me let the jury go. It is time for lunch.

I have made arrangements with the Catholic church next door that you can get ashes there. I have given the times to the marshals. There is also St. Paul's Church, which I believe is Episcopal, down at the other end of City Hall Park, and I have told them about the times there also.

I understand there are some churches up where you are staying that will be distributing ashes and having services tonight. You fellows work out with the marshals what is best for you.

(The jury left the courtroom.)

THE COURT: Do you want this at the side bar or do you want to --

MR. RICHMAN: Yes, your Honor, I want to have a conference at the side bar.

THE COURT: At the side bar?

MR. RICHMAN: Yes.

THE COURT: I assume you don't need all the other attorneys and defendants here for a conference at the side bar.

MR. RICHMAN: No.

THE COURT: Gentlemen, be back here, please 10 minutes after 2. The reason is I want to make sure the jury is back from going to church, those members who might be going.

(In the robing room; counsel present.)

THE COURT: All right, go ahead.

MR. RICHMAN: I want to put on the record, your Honor, that I find Mr. Curran's remarks concerning that Lalli transaction as highly prejudicial to the defendant and I would move for a mistrial at this juncture.

I have never seen anything like it. There was no basis and I think it was an act of bad faith if ever I have seen one.

THE COURT: I don't think it was an act of bad faith.

MR. CURRAN: May I be heard?

THE COURT: Yes.

MR. CURRAN: In the first place, it was not an act of bad faith.

In the second place, Mr. Richman I believe probably did not with Mr. Stasio or attempted to do it.

With the defendant himself, he certainly put his character in issue to a large extent. With Mr. Malerba he went all the way and Mr. Malerba went on and on making Mr.Tolopka one of the best police officers that ever wore the blue. Mr. Richman has every right in the world to do that, but he testified to his reputation for honesty and as a police officer and I submit, your Honor, it is hornbook law that I have every right in the world to examine on the basis for that testimony, and as your Honor knows a proper question, because that is one of the few hearsay areas he is permitting, he is testifying to reputation, I have a right to ask him questions that go to reputation upon which I have a good-faith basis to ask the question.

Mr. Lalli, Mr. Fred Lalli, does have an arrest for policy, at least, or maybe two, and that

is what I said in the question, and he has indeed been charged here in this court with violating the federal narcotics laws.

You may recall that Mr. Tolopka testified that he was still a friend of Lalli's from 1973 up to the present. Based upon Mr. Malerba's testimony and his unqualified endorsement of this man's character, Mr. Richman and the witness, I submit, your Honor, opened the door to a very proper standard question which is asked of character witnesses, as your Honor knows, many times over. I did nothing in bad faith and I submit I did nothing improper. I was meeting improper.

MR. RICHMAN: If I may comment on that, your Honor, first of all, the issue of Mr. Malerba's comments concerning Mr. Tolopka's reputation as a police officer was opened up by Mr. Curran himself. As soon as he started exploring the possibilities of money coming from other sources that Ben Tolopka might have received money while as a cop implying unlawful gratuities, I felt it was incumbent upon me to show he was an honest cop. That was Mr. Curran's -- you can thank Mr. Curran for that. I didn't have any intention of calling Malerba on that issue at all. I only intended to call him as for his truthfulness and veracity now, you

opened the door.

Secondly, with reference to this, Lalli is merely charged with a crime, he has never been convicted of a crime. The mere fact that a man is charged with a crime does not make him a shady person.

MR. CURRAN: Your Honor, may I respond?

THE COURT: Your motion for a mistrial is denied. Go ahead.

(Luncheon recess.)

AFTERNOON SESSION

(2:15 p.m.)

(In open court; jury not present.)

THE COURT: I gather you have one more witness, Mr. Richman.

MR. RICHMAN: Yes, your Honor. I am going to recall Mr. Malerba for a brief spell.

THE COURT: All right.

MR. DOWD: Your Honor, I may have to leave a few minutes early this afternoon. I trust Mr. Curley will cover for me.

THE COURT: I am sure he will.

Right, Mr. Curley?

MR. CURLEY: Yes.

THE COURT: Mr. Warner, how long do you expect to be this afternoon?

MR. WARNER: I think probably no more than 20 minutes or so.

THE COURT: All right. Anybody else today?

MR. LOPEZ: Yes, your Honor. I have three people that I am very anxious to put on because they are working people.

THE COURT: All right.

MR. WARNER: I have a bit of a problem, your Honor, because it appears that one of the witnesses who was going to come down is not able to be located and will not be available until tomorrow morning.

THE COURT: We can break it up.

(Jury present.)

THE COURT: Mr. Richman, do you want to recall someone?

MR. RICHMAN: Yes, your Honor. I would like to recall Mr. Malerba for a moment, if I may.

THE COURT: Come on up.

F R A N K M A L E R B A was recalled as a witness by the defendant Tolopka and, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RICHMAN:

Q Mr. Malerba, this morning you testified referring to people's 103 in evidence.

A I did.

Q And you stated that the working week was from Thursday to Wednesday?

A That's correct.

Q During the lunch hour I had a conversation

with you --

A That's right.

Q -- together with Mr. Tolopka and I referred you Defendant's H in evidence and you reviewed your records, is that correct?

A That's right.

Q Can you tell us what conclusion you came to?

A Well, I found out I was in error at the time and by checking here now I could give you the exact dates that he was working.

Q Please.

A It would be August 3rd, 5th, 6th, 7th, 8th, 17th, 18th, 19th, 20th, 21st, 22nd and 31st, and then he goes from September 1st, 2nd, 3rd -- these are September -- 4th, 5th.

Q That is all right, sir.

MR. RICHMAN: I would like to offer this, your Honor, a calendar for 1970, as Defendant's Exhibit J for identification.

MR. CURRAN: No objection, your Honor.

(Defendant Tolopka's Exhibit J marked for identification.)

THE COURT: I assume that nobody else has any objection either. We will take it in.

(Defendant Tolopka's Exhibit J was received in evidence.)

BY MR. RICHMAN:

Q Referring to Defendant's J in evidence, and collating that with your records indicated dates, could you tell us what days of the week Mr. Tolopka was employed in August of 1970?

A He was employed on the 3rd, which is a Monday. Tuesday he was off, he took the day off. I think he was sick at the time. The 5th was a Wednesday, the 6th Thursday, the 7th Friday, and the 8th was a Saturday.

Q I am talking about the latter part of August.

A That's right.

Q Please go to the end of August, from the 12th on or so.

A Well, then he was off and he come in again on the 17th. That would be a Monday. He got through on the 22nd. He worked that whole week, up to Saturday. Then he takes off.

Q After you came to that conclusion after discussing it with me did you and I both approach Mr. Curran to call it to his attention just before this session started again?

A That's right.

MR. RICHMAN: No further questions.

CROSS EXAMINATION

BY MR. CURRAN:

Q Mr. Malerba, the exhibit, Government's Exhibit 103 for identification, directing your attention to the month of August, as I understand your testimony now, the work week here, which shows, for example, no work on a Wednesday or no work on a Thursday --

A That's right.

Q -- is that accurate or not accurate?

A Well, it's accurate. But you see, it is the different dates. The weekend is here. Say for instance here, this is the 19th. Now, this over here would be the 18th, the 17th, the 16th and the 15th, see, on that line.

So in other words, when he is working here the 19th, 20th and 21st I go down one, he is working the 20th, 21st, see. When I testified this morning I was going backwards.

But in other words, he worked a full week from Monday to Saturday, and then he takes off a week. But he has been -- not in that year, 1970. In '71, '72 his week ends on a Wednesday and he comes back on a Thursday.

Q I was going to ask you about that. After 1970, for example, 1971 and '72, he worked a different week?

A Yes. That was much later, '71, '72. But sometimes he would work and get off on a Saturday.

Q This week that ends on a Wednesday that you testified about this morning, he did that in '71 and '72?

A Well, I would have to check it out here.

Q Didn't you just tell me now --

A Yes.

Q You weren't looking at any documents?

A No.

Q Didn't you just tell me that?

A Yes, that's right.

Q '71 and '72 he worked a different kind of week?

A Well, he would make his own week. Sometimes he was short for like unemployment. Sometimes he would work two weeks in a row.

Q Sometimes he would stop on a Wednesday and take off Thursday, Friday and Saturday?

A That's correct. Well, he would take off Thursday, Friday and Saturday, and then Monday, Tuesday, Wednesday.

Q And come back the following Thursday?

A That's correct, yes. But in that particular time where you state 1970 would be he was off from Monday to Saturday.

Q That August 4th I think you testified on direct examination you think he was sick.

A Yes. He is marked there not available. So he was sick at the time.

Q You remember that he was sick that day?

A No, I can't, I can't remember that.

Q You just assume that?

A Yes, I just assume that. Yes, I just assume that.

Q Because he skipped a day? Because he skipped a day?

A That's right.

Q That he was probably ill?

A That's right.

MR. CURRAN: No further questions.

MR. RICHMAN: No questions.

THE COURT: Step down.

(Witness excused.)

1B

THE COURT: Call your next witness.

MR. RICHMAN: John Mullins.

J O H N T. M U L L I N S, called as a witness on behalf of the defendant Tolopka, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RICHMAN:

Q Mr.Mullins, would you tell us your present occupation?

A I am presently a confidential investigator with the Attorney General,State of New York.

Q Mr. Mullins, you know Benjamin Tolopka, do you not?

A I certainly do.

Q How long do you know him?

A I know Benny Tolopka about 40 years.

Q You knew him as a child, didn't you?

A I knew him as a young teenager in the South Bronx.

Q You were also a detective with the Police Department of the City of New York, were you not?

A Yes, I was.

Q Did you have the occasion to work in the same precinct as Benjamin Tolopka?

A I did. I was a young patrolman when Benny was already a detective in the 28th Precinct in Harlem.

Q Will you tell me Benjamin Tolopka's reputation for honesty as a patrolman, as a detective with the City of New York?

A Nothing but the finest in any dealings I ever had with him or knew about him.

Q Mr. Mullins, you have heard that Ben Tolopka has been charged with a crime, have you not?

A Yes, I did.

Q Have you had occasion to discuss this with other persons?

A Yes, I did.

Q Who?

A Particularly fellow -- former detectives that worked in the New York City Police Department with Benny Tolopka, with me, who knew him for his reputation and the type of person that he was, and it was a shocking thing to hear about it and read about it.

Q Tell me, what is Mr. Tolopka's reputation for truthfulness and veracity.

A I never found him to be anything but truthful and honest in anything.

MR. RICHMAN: No further questions.

CROSS EXAMINATION

BY MR. CURRAN:

Q Mr. Mullins, are you familiar with Mr. Tolopka's

reputation for honesty and for truth and veracity in the community in which he lives, in the north Bronx?

A Not particularly there, but only through -- in the beginning, as a young teenager, as I said, I did. But later on I lived in another part of the Bronx, not particularly in his neighborhood. But I worked with him many, many, hours.

Q Is the answer to my question no?

A No.

Q Did you say no?

A No.

Q Mr. Mullins, have you heard that he is a friend of a man named Fred Lalli?

MR. RICHMAN: Objection, your Honor.

THE COURT: Come up here, both of you.

(At the side bar.)

THE COURT: I assume you are going into the same question again.

MR. CURRAN: Yes, your Honor, the same question, and perhaps one additional question.

MR. RICHMAN: Your Honor, after your Honor's ruling this morning, and in view of the fact there are no convictions, the man has been charged with a crime, the only purpose Mr. Curran could possibly use to introduce

this question would be for the effect it might have upon the jury, which is not evidentiary.

THE COURT: What is the other question?

MR. CURRAN: I wanted to first see what the answer to this question was going to be, your Honor.

As we I think discussed in the robing room this morning, Mr. Richman has seen fit to put the defendant's character in issue, and it seems to me I have a right to ask a character witness if he has heard certain things about him which I have a basis to ask. I think that is fundamental.

THE COURT: Yes, but here we have a situation where basically this man, the present witness, says that he knows nothing about the reputation of the defendant in the community and the connection between this defendant and the Lallis is only through the community and through the neighbors.

MR. CURRAN: All right, your Honor.

THE COURT: Under the circumstances I think it is something that really should not be gone into.

MR. CURRAN: Let me then go --

THE COURT: I am not suggesting that it's improper. I just don't think it is going to get you any place.

MR. CURRAN: Let me then go to the second possible line.

As Mr. Richman knows, there are complaint letters in his file.

MR. RICHMAN: And responses and investigations clearing him completely.

MR. CURRAN: We are talking about a character witness, your Honor.

MR. RICHMAN: Complaints, that is all it is.

MR. CURRAN: I understand. Obviously if he had a conviction I would have brought it up before this.

I am considering -- I will put it that way -- I am considering asking this witness if he had heard that he shook down businessmen in Harlem.

THE COURT: As a policeman?

MR. CURRAN: Yes, in the 28th.

MR. RICHMAN: Then I would have to introduce the investigations, I would have to ask for an extension of the case just to answer that, to show he was cleared. I would bring the Police Commissioner in to indicate that he received the highest commendation and an apology from the Department. We have that in the file too.

MR. CURRAN: There are three complaints. Your Honor, again, I am not trying the case, but I suggest that

it may be a proper question in the light of the witness's testimony.

Mr. Richman seems to think that the issue is whether or not the complaints are valid. I suggest that isn't the issue at all. The issue with this witness is whether he has heard of the facts in the complaint, if he answers that question properly, yes or no. I assume he will probably answer it no with a speech, but that is his speech.

MR. RICHMAN: I consider the question highly inflammatory and highly prejudicial, your Honor, and I would have to then request a continuance and an opportunity to submit the fact the man was confronted with this, no formal complaint was ever drawn, there has never been any formal charges.

You are aware of that. This was a crank letter. It was unsigned, an unsigned crank letter.

MR. CURRAN: There are about two or three such complaint letters, not just one.

MR. RICHMAN: All unsigned.

MR. CURRAN: Your Honor, rather than prolong it I will withdraw it.

THE COURT: What does it mean? It means a hill of beans that is not worth fighting about right now.

MR. RICHMAN: Thank you.

2A

(In open court.)

BY MR. CURRAN:

Q Mr. Mullins, how long, about, have you been a confidential investigator for the State Attorney General?

A Since July of 1972.

Q Was that when you retired from the Department, sir?

A No. I had worked other jobs prior to my -- prior to going with the Attorney General.

Q When did you retire from the Department, sir?

A I retired officially on January 28, 1966.

Q Were you a detective then?

A Yes, I was, a first-grade detective in the Safe & Loft Squad.

Q Did you ever work the 28 as a detective?

A Not as a detective, as a patrolman and as a mounted policeman.

Q In the uniform force?

A In the uniform force, yes.

Q But you never worked in the 28 Squad?

A I worked in the Borough Squad, which embraced the whole Borough of Manhattan. At times I would be in that area.

Q Let me try it again.

You never worked in the 28 Squad per se?

A No, sir. No, sir.

Q How about the Fifth Squad?

A Not the Fifth, either.

Q Never worked there, either?

A No, sir.

MR. CURRAN: No further questions.

MR. RICHMAN: No further questions, your Honor.

THE COURT: Does anybody else wish to inquire?

All right, step down.

(Witness excused.)

MR. RICHMAN: At this point, your Honor, the defendant Benjamin Tolopka completes his direct case.

THE COURT: All right.

MR. CURRAN: Your Honor, does that mean the defendant rests?

THE COURT: I believe so.

MR. WARNER: Before Mr. Lopez begins, may we approach the bench?

THE COURT: Yes.

(Discussion at the side bar off the record.)

(In open court.)

MR. LOPEZ: May I, your Honor?

THE COURT: Yes.

tp3

MR. LOPEZ: Your Honor, on behalf of the defendant Di Napoli, we call Miss Denice Sabella, please.

D E N I C E B. S A B E L L A, called as a witness on behalf of the defendant Di Napoli, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOPEZ:

Q Miss Sabella, where are you employed?

A J. Walter Thompson.

Q And what is your position there?

A A private secretary.

Q And to who is that?

A To a vice-president of new ventures.

Q Do you know the address in the Bronx 1908 Bronxdale Avenue in the Bronx?

A I do.

Q And when was the first time, if you remember, that you went to that address?

A I believe it was March 31, 1971.

Q And did you visit with anyone there?

A I did.

Q And who did you visit with?

A I went with one Anthony Di Napoli.

Q Yes?

A And I went there because it was his --

Q Go ahead.

A His sister-in-law's birthday.

Q And who would that be?

A Mrs. Di Napoli.

Q What is her first name?

A Geaney.

Q Do you know her by any other name? Gene Patalano?

A No, I do not, sir.

Q She was living at 1908 Bronxdale Avenue on March 31, 1971, is that correct?

A She was.

Q And how many times after March 31, 1971, did you visit with her?

A Oh, I don't know. I didn't count.

Q Was it more than ten times?

A I really don't know.

Q Did you visit at that address throughout the year 1971?

A Perhaps on some holidays.

Q Do you remember the inside of the apartment at 1908 Bronxdale?

A I do.

Q And do you remember the living room there?

A I certainly do.

Q On March 31, 1971, situate yourself on that date in the living room.

Could you see into the dining room at that time?

A No, sir.

Q Was there any door from the living room into the dining room?

A No, sir.

Q If you wanted to go into the living room -- if you were in the living room and you wanted to go into the dining room, what would you have to do?

A You would have to walk out of the living room on the righthand side and then go down a little hallway, making a left.

Q What was between the living room and the dining room?

A Well, there was a wall with a mural.

Q I am going to show you some photographs and I am going to ask you to identify them, please.

I show you Defendant's Exhibit D, and ask you if you recognize that photograph?

A I do.

Q What is it?

A It looks like the house.

Q Is it the house?

A I would say it was, although there were several houses just like this on the same block.

Q Right.

About how many houses that looked like this one on the same block?

A Oh, they were two by two. I don't remember.

Q I show you Defendant's Exhibit H, and I ask you if you can identify that?

A Yes.

Q What is that, please?

A Well, when you first walk into the house, this was what you see, a little hallway and then this would be the staircase leading to the bedrooms and then the dining room would be in there (indicating).

Q I show you Defendant's Exhibit M, and I ask you if you can identify that, please?

A Yes. This would be the wrough iron doors leading to the living room and here, as I said, is the wall with the mural on it, and then coming out and walking up this little corridor, then you would have to make a left to get into the dining room (indicating).

Q I show you Defendant's Exhibit N and ask you

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to describe that.

A That would be the same.

Q The same?

A Thank you very much.

MR. LOPEZ: I offer them into evidence, your Honor.

MR. PHILLIPS: No objection, your Honor.

MR. LOPEZ: Your Honor, I have no further questions of this witness.

THE COURT: All right.

Does any other counsel here have any objection?

Apparently there is no objection.

It will be received in evidence.

MR. LOPEZ: Does your Honor wish to see them before the jury?

THE COURT: I would like to take a look at them.

MR. LOPEZ: Yes, your Honor.

xx (Defendant Di Napoli's Exhibits D, H, M and N, respectively, received in evidence.)

THE COURT: Mr. Phillips, do you wish to inquire?

MR. PHILLIPS: Yes, your Honor.

MR. LOPEZ: Your Honor, may the jury see the photographs?

THE COURT: Yes.

MR. LOPEZ: Thank you.

(Pause.)

THE COURT: All right, Mr. Phillips.

CROSS EXAMINATION

BY MR. PHILLIPS:

Q I take it it is Miss Sabella?

A It is.

Q And you went to this house with Anthony Di Napoli?

A I did.

Q Is he related to Joseph Di Napoli?

A He is.

Q How?

A They are brothers.

Q Did you see Joseph Di Napoli there from time to time?

A Occasionally.

Q Was he living there?

A He was.

Q Was Anthony Di Napoli living there?

A He was not.

Q Did you ever see anybody by the name of Vincent Di Napoli there?

A No, I did not.

Q You know Vincent Di Napoli, don't you?

A I believe I do.

Q Is he also a brother of Joseph and Anthony Di Napoli?

A He is.

Q But you never saw him there?

A No.

Q You are sure about that?

A I'm positive.

Q In the living room, was there a sofa?

A There was.

Q Did the sofa go around a corner?

A Around the corner?

Q Yes.

A No. As a matter of fact, it was two sofas.

Q Two sofas?

A Yes.

Q Let me see.

I show you Government's Exhibit 78, Miss Sabella. Would you tell me if this is an accurate diagram of the living room if this were the doorway that I am pointing to and is designated as "Door" there?

A No, I don't think it is accurate. You have to walk up a little corridor and then you would see the wrought iron doors and then you would walk in.

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Q In other words, you wouldn't go immediately in right after you came in the door?

A No, you wouldn't. You would have to take a few steps and then two wrought iron doors to get in. You would have to make a left.

MR. PHILLIPS: Do we have any more colored pens, Mr. Delberian, such as green or yellow?

THE CLERK: Yes (handing).

Q Here is, I think, a green pen, Miss Sabella. Would you mark where the entrance into the living room is?

(Witness complies with the request.)

Q Where you made that little note there, that is where the entrance is?

A Yes.

Q Do you see where it is marked "Sofa" here?

A Yes.

Q Does that accurately depict where the sofa is in the living room or where a sofa is?

A That's right, L-shaped.

Q Is it L-shaped all the way around?

A No, it wasn't all the way around, but it was L-shaped (indicating). I wouldn't say it was from this end going to that wall.

Q I understand. But it was one continous sofa

around the corner, though, is that correct?

A Yes. It was two sofas, as I said. Over here was sort of a table.

Q Small table?

A Actually, it wasn't a table, it was covered with velvet, but that cut this couch off from this (indicating).

Q Was this couch the same type of couch as the other couch?

A It was, except this one was longer (indicating).

Q By the way, do you know anybody by the name of Butch Pugliese?

A No, I don't.

Q Was there a closet -- you were in the dining room, I take it, from time to time, weren't you?

A Yes.

Q There was a closet in the dining room?

A As a matter of fact, there was.

Q What was in it, do you recall?

A I don't look in other people's closets.

Q You didn't have occasion to see if there were a lot of men's suits in the closet?

A As I said, I don't make it a habit of looking in other people's closets.

Q Would you answer my question? You don't know what was in the closet?

A No, I don't.

MR. PHILLIPS: That's all I have, your Honor.

MR. LOPEZ: No further questions of this witness.

Thank you.

THE COURT: Wait a second, ma'am.

Does anybody wish to examine this witness?

All right. Now you can go.

(Witness excused.)

MR. LOPEZ: Your Honor, may I call Mr.

Sylvester Malangone.

S Y L V E S T E R M A L A N G O N E, called as a witness by defendant DiNapoli, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOPEZ:

Q Mr. Malangone, just a few questions.

In what kind of work are you engaged?

A I put up wallpaper, Sanitas, I paint, I do carpenter work, plastering, electric and plumbing. Whatever there is in the building line.

THE COURT: You are a handy man to have around.

All right.

THE WITNESS: That's what they call me.

Q During the year 1971 did you have occasion to go to the DiNapoli house at 1908 Bronxdale Avenue in the Bronx?

A Well, I don't know the address, but I was -- I was brought there by some friend of mine.

Q What was the friend's name?

A Hank.

Q Did you have occasion to do any work at that house?

A Yes, sir.

Q What kind of work did you do?

A I put up paper, I call it wallpaper; they call it mural, a picture. It's a picture. Mural, a picture on it.

Q I show you Defendant's Exhibit O and I ask you if that is the picture of the mural that you hung up in the DiNapoli house.

A That's right.

Q That is the one?

A That's the one.

Q And -- And --

A I recognize that there wrought iron.

Q And when do you recall that you hung up the mural in the DiNapoli home?

A Some times in March.

Q Of what year?

A '71.

Q Do you recall the living room in that house?

A Yes.

Q Do you remember if you could see from the living room into the dining room?

A No, not through that wall, unless I'm Superman.

MR. LOPEZ: Your Honor, I have no further questions.

I offer Defendant's Exhibit O into evidence and I ask, if Mr. Phillips has no objection, that it be shown to the jury ahd your Honor.

Your Honor, may I ask just one other question while Mr. Phillips is looking at the photograph?

THE COURT: Yes.

BY MR. LOPEZ:

Q Do you know the last name of Hank?

A Let me see now.

Q If you remember.

A That's his nickname, you know, we call him like that. I used to call him Hanky Doodle Dandy.

Q But you don't see that Hank in this courtroom here?

A Naw. I think he's sick.

MR. LOPEZ: Thank you. No further questions.

After Mr. Phillips finishes may the jury see the photographs?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. PHILLIPS:

Q Where was this house located?

A I tell you, you see, the house I don't know because I only was brought there once. I know it was on Bronxdale Avenue, but I don't know the number of the house and I don't even know what the house looks like.

Q Do you have any idea what the number of the house was?

A No. No, sir.

Q Do you know what the cross street was that it was near?

A No. I know he brought me over to Tremont and then brought me to the house.

Q Did you go to the second floor of the house?

A No.

Q Just the first floor?

A Walk in.

Q And where was the living room located?

A Well, it was located as soon as you walk inside from the entrance.

Q To the left or to the right?

A That I don't remember.

Q You don't recall whether you turned left or right to go to the living room after you walked in?

A Just walked right into the room.

Q You mean as soon as you walked into the house

you were in the living room?

A I'm not sure now.

Q You are not sure of that?

A No. All I know they says that is the job and I went at it and I start to work on it.

Q Did you go into the dining room?

A Yes. I went into the dining room where the wall was at.

Q The wall was in the dining room?

A No, it was inside the wall.

Q Where was the dining room located in relation to the living room? to the living room? to the

A It was in the living room. was in the living

No, no. Where was the dining room located in relation to the --

A Well, it was on the other side. You had to go around (indicating) because there was a wall there. You can't get through there.

Q You were asked to put the mural up, is that correct?

A Yes.

Q And which side of the living room did you put the mural up?

A On this side (indicating).

you were in the living room?

A I'm not sure now.

Q You are not sure of that?

A No. All I know they says that is the job and I went at it and I start to work on it.

Q Did you go into the dining room?

A Yes. I went into the dining room where the wall was at.

Q The wall was in the dining room?

A No, it was inside the wall.

Q Where was the dining room located in relation to the living room?

A It was in the living room.

No, no. Where was the dining room located in relation to the --

A Well, it was on the other side. You had to go around (indicating) because there was a wall there. You can't get through there.

Q You were asked to put the mural up, is that correct?

A Yes.

Q And which side of the living room did you put the mural up?

A On this side (indicating).

Q Which side is that?

A Well, on the left.

Q On the left as you came in?

A Well, I don't remember how -- which way I went in, because when I go in I go out quick. I like to do a job fast and get my money.

Q Do you think if I gave you a piece of paper you would be able to draw a diagram?

A Oh, no, I'm not an artist. I might be an artist in different type of work, but not painting artist.

Q Mr. Malangone, I have drawn a square on this piece of paper, and if I indicate with you with an X that that is the entrance to the house, can you tell me --

A No, that I can't. I'm not sure now, see. That there I never took notice.

Q You can't tell us where the living room is?

A No. I mean to say, like, if the entrance is this way, I don't know if that's it. The entrance could be in the center. I don't know. All I know I went in and I went into the living room there, and she says, "This is the place to do." I never forget, it was a piece of plywood on the wall.

Q But where would the living room be if the entrance was on this side of the house, the bottom side

facing you?

A You got me, boy. All I know is I walked in that room and I walked inside the living room and I went inside and did the job, that's all. That's what I did.

Q You wouldn't be able to put on there with this pen where the living room is?

A No, no, I can't.

Q Would you be able to put on there where the dining room is?

A Dining room?

Q Right. Q Right.

A I don't know if it's -- I know was the other side.

Q Where was the mural that you put on?

A Right on this side and the entrance was this side, this way (indicating).

Q And how big was the mural?

A Seven, seven feet something.

Q Seven feet by what?

A Well --

Q Seven feet long, you mean?

A Something like that.

Q Did it go from the floor to the ceiling?

A From one end to the other end.

Q From what?

A From one end to one, this way, both ways.

Q The whole wall, you mean?

A No, the whole length. It was too big, I had to put it, cut it short. I just got the center and then I put the two pieces on the side.

Q But how much of the wall did it take up?

A Oh, that I don't remember now, because I didn't measure it, you know. But I knew was no more than seven feet.

Q No more than seven feet? [illegible]

A It was so close, in other words, it was closed in this way here and the wrought iron gate was this way and you couldn't see anything this way or that way (indicating).

Q By the way, you went there in March of 1971?

A Yes.

Q You are sure it was 1971?

A Yes.

Q You are sure it was 1971?

A That's right, '71.

Q And you are sure it was March?

A That's right. The reason why I know because sometimes I keep -- I put down whatever I do, whatever Money I make I put on a piece of paper, any paper that I find, and I got in my pocket.

Q And you kept those papers?

A That's right.

Q And when was the last time you looked at them?

A The last time? Only -- whenever I come across, I see it, and I just put it aside.

Q How is it --

A I always keep it in the drawer, whatever I got. Sometimes I lost a few pieces that I had. The last pieces that I had.

The piece of paper, I take it it was a piece of paper that you put down the date that you went there, is that correct?

A No, I didn't take the paper with me on the job.

Q How is it you remember it was March of 1971 that you were there?

A How? It's in there. I remember because that time my wife would have been 60 years old and her brithday falls on March the 23rd and I did a week or two before her birthday.

Q And you can remember that distinctly?

A Well, then it come to me when I look at the paper.

Q When was the first time anybody asked you when you did that job?

A Well, nobody. Only the other day.

Q The other day was the first time?

A That's right.

Q Who asked you?

A Well, what's her name there, Gene.

Q Gene Patalano?

A Well, I don't know the second name. All I know is her name was Gene. She come over and she wanted me do a favor: remember when was the date and the month, the year, I put up that mural for her.

Q And that was the first time anybody asked you?

A That's right.

Q Did you tell her right then the date?

A No. I had to look up.

Q And you looked up on a piece of paper?

A I looked up on a piece of paper and I happen to come across it.

Q And you saved that piece of paper?

A Well, yes. I always keep it aside, I always

save.

Q You say the mural was seven feet long?

A Seven wide.

Q Seven feet wide?

A About seven feet.

Q And it went from the floor to the ciling?

A No.

Q It did not go from the floor to the ceiling?

A No.

Q How high was it?

A Well, I don't know. Maybe three feet.

Q About three feet? About three feet?

A I don't know. I'm not sure now. I can't be sure of it. Maybe more. Who knows.

Q Did you ever go back to the house after March or is that the only time you were ever there?

A That was the only time.

Q So you weren't there at all in 1972?

A No.

MR. PHILLIPS: I have nothing further, your Honor.

MR. LOPEZ: No further questions, your Honor.

Thank you very much.

THE COURT: Anybody else wish to inquire?

All right. Mr. Malangone, step down, please.

(Witness excused.)

MR. LOPEZ: Your Honor, may the photograph be shown to the jury.

THE COURT: Sure.

MR. LOPEZ: In the meantime I am going to call another witness, your Honor, Joseph DiBenedetto.

MR. FISHER: Your Honor, may we approach the side bar?

THE COURT: Sure.

(At the side bar.) (At the side bar.)

MR. FISHER: If your Honor please, I have been advised that the following witness will testify in substance that he was in the loansharking business with the defendant DiNapoli.

If your Honor please, as a result I would respectfully move for a severance from the trial of Mr. DiNapoli on the part of Christiano.

MR. ELLIS: I join in that, your Honor, on behalf of Mamone.

MR. RICHMAN: So do I, your Honor.

MR. LOPEZ: I am obliged to put this witness on very reluctantly, but the offer into evidence of the

$1 million gives me no other choice, your Honor.

MR. ELLIS: Your Honor, whatever Mr. Lopez' need is to put the witness on the stand, bringing out his conviction lends an aura of criminality to the entire defense table. We would urge either a mistrial or a severance.

MR. FISHER: Substantial criminality, if it can be measured in terms of dollars, your Honor, which the government certainly hopes it will.

THE COURT: No. I will deny the motions for a severance and mistrial.

(In open court.)

THE COURT: All right. Swear the witness.

J O S E P H D i B E N E D E T T O, called as a witness by the defendant DiNapoli, being first duly sworn, testified as follows:

MR. LOPEZ: May I, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. LOPEZ:

Q Mr. DiBenedetto, from 1963 to about 1969 where did you reside?

A 1908 Bronxdale Avenue.

Q What streets are close to 1908 Bronxdale Avenue?

A Rhinelander Avenue and Matthews Avenue.

Q Is there a diner nearby?

A No.

Q Is there a diner within a distance of 10 or 15 blocks from there?

A Yes.

Q About how many blocks away from 1908 Bronxdale is the diner located?

A About five or six blocks.

Q And what is the address of that diner, if you know, or on what street is it?

A I don't know the address. It's on Bronxdale and Tremont Avenue.

Q Mr. DiBenedetto, is 1908 Bronxdale a semidetached brick house?

A Yes, it is.

Q I show you Defendant's Exhibit D and ask you what that is?

A 1908 Bronxdale Avenue.

Q Are there numerous houses like 1908 Bronxdale Avenue on the block?

A Yes.

Q When you moved into 1908 Bronxdale Avenue, as you came in through the door of the first floor what was on your left?

A On my left was the parlor.

Q From the parlor or living room could you walk in at that time into the dining room?

A At that time, yes.

Q In other words, it was completely open, is that correct?

A Yes, sir.

3B

Q Did there come a time when you moved from 1908 Bronxdale?

A Yes.

Q And who moved into 1908 Bronxdale, if you know?

A Joseph Di Napoli.

Q And did you have occasion to go to 1908 Bronxdale after you moved out?

A Yes, sir.

Q You told us you moved out when, exactly, if you remember?

A Approximately October of '69.

Q I draw your attention to 1971. Did you continue to go to 1908 Bronxdale Avenue in 1971?

A Yes, sir.

Q Had there been any physical changes of the layout?

A Yes, sir.

Q Let's take it in March of 1971. Did you have occasions to go to 1908 Bronxdale Avenue in March of 1971?

A Yes, sir, I did.

Q Did you go to 1908 Bronxdale Avenue on a regular basis?

A Yes, sir.

Q What changes had taken place at 1908 Bronxdale in that first floor apartment?

A Well, there was paneling in the foyer, there was a new kitchen, there was a partition with a closet.

Q Where was this partition with a closet?

A Between the dining room and the living room.

Q And what was on the living room side of the wall?

A The living room side was gates with a mural on it and on the opposite side, the dining room side, was a big closet.

Q Was there an entrance at that time between the living room and the dining room?

A No, sir.

Q If you wanted to go from the living room into the dining room what did you have to do?

A You had to come out of the living room, make a left, go into the kitchen, make another left into the dining room.

Q So that as of the start or somewhere early in 1971, you could not see from the living room into the dining room, is that correct?

A Yes, sir.

Q You have indicated to us that you went on numerous occasions to 1908 Bronxdale, isn't that correct?

A Yes, sir.

Q What was your business at that house?

A I was collecting money. I was collecting money for Joey Di Napoli. I was a shylock.

Q What wages was he paying you per week?

A $200 a week.

Q In the United States District Court For The Southern District of New York were you indicted and charged with conspiracy to violate the shylocking laws under Indictment No. of the year 1972 Cr. 1021? Were you charged with conspiracy and 10 other counts of violations of the shylocking laws?

A Yes, sir.

Q Was there anyone else named as a defendant in that case?

A Yes, sir.

Q Who else was named as a defendant in that case?

A Joseph Di Napoli.

Q On January 4th, January 4th of the year 1973, did you appear before the Honorable Lloyd MacMahon in this court, in this courthouse, for sentence?

A Yes, sir.

Q Did you go to trial on that case?

A No, sir.

Q Did Joseph Di Napoli go to trial on that case?

A No, sir.

Q Did he plead, as you did, to conspiracy to violate the shylocking laws?

A Yes, sir.

Q What was your sentence, sir?

A Two years.

Q And what was Joseph Di Napoli's sentence?

A Three years.

Q As far as you know, where is Joseph Di Napoli at the present time residing?

A Federal House of Detention, 427 West Street.

Q In other words, that is the Federal Prison?

A Yes, sir. A Yes, sir.

Q And that has been since January 4, 1973?

A Yes, sir.

Q Were you the only person that was collecting money for Joseph Di Napoli, if you know?

A No, sir.

Q Were there others?

A Yes, sir.

Q Do you know their names?

A I know one other.

Q And what is his name?

A David Winter.

Q He was also collecting money for Joseph Di Napoli,

is that correct?

A Yes, sir.

Q How would you estimate Joseph Di Napoli's business?

A Very, very big.

Q I call your attention to the proceedings of January 4, 1973, in this courthouse when you appeared for sentence. Did you hear Assistant United States Attorney Gerard J. Hinckley advise Judge MacMahon --

MR. PHILLIPS: I object to this, your Honor, as to what the Assistant United States Attorney said.

MR. LOPEZ: Your Honor --

THE COURT: No, I will permit it. Go ahead.

Q Did you hear him say this:

"Your Honor, the defendant Di Napoli originally was charged in a 13-count indictment which essentially laid out charges involving loan sharking. He did plead guilty to the first count in that indictment, which is the conspiracy charge.

"The nature of the loan sharking business in which he was involved in was one of some magnitude and, secondly, was one which involved the implied and actual use of physical violence."

Did you hear the Assistant United States Attorney say that?

A Yes, sir.

Q Did you also hear the Assistant United States Attorney say that Di Napoli was engaged in loan sharking that involved hundreds of thousands of dollars?

A Yes, sir.

Q During the entire sentencing procedure on January 4, 1973, did you hear either the Court or the Assistant United States Attorney make one mention of narcotics on January 4, 1973?

A No, sir.

MR. LOPEZ: No further questions.

THE COURT: Ladies and gentlemen, we are going to take our afternoon break now.

(Jury left the courtroom.)

THE COURT: Mr. King, if you are going to make that medical appointment you better leave right out.

MR. KING: Thank you, Judge.

THE COURT: All right. We will take ten.

(Recess.)

4A

(At the side bar.)

MR. SIEGAL: I understand that this witness, Di Benedetto, knows or met some of these people sitting around the table over at West Street. I don't want any cute question do you know them without establishing that that's where he knows them from.

MR. PHILLIPS: I am not going to ask him if he knows them from West Street. I am not going to ask if he knows these people from West Street.

MR. SIEGAL: Are you going to ask him if he knows them?

MR. PHILLIPS: I am going to ask about a couple of them.

MR. SIEGAL: That is the point. I say he only knows them from West Street.

MR. EPSTEIN: Are you going to ask him if he knows Carmine Tramunti?

MR. PHILLIPS: I will see where my cross-examination goes.

MR. SIEGAL: I want to know now before the damage is done.

MR. EPSTEIN: I have spoken to Mr. Lopez, who has interviewed this witness, being Mr. Lopez's witness on behalf of Joseph Di Napoli. Mr. Lopez has informed me

he put the question to Mr. Di Benedetto and Mr. Di Benedetto informs me he only knows Tramunti from being cellmates in West Street.

MR. PHILLIPS: When did Di Benedetto go to West Street?

MR. LOPEZ: As I recall now, at the end of October, the first of November, 1973. He was brought down on a writ from Allenwood.

MR. PHILLIPS: Who are you talking about?

MR. LOPEZ: Di Benedetto. He was serving time in Allenwood, Pennsylvania.

MR. PHILLIPS: Then I will ask prior to June, 1973, did you know any of these people.

MRS. ROSNER: Your Honor, my information is that Di Benedetto, likewise, never knew my client Louis Inglese until they were in West Street.

However, I would object to Mr. Phillips asking whether prior to such-and-such a date he had ever met the defendant Inglese because the jury now knows that this individual was remanded to West Street during that period of time and the clear implication of that would be there was a meeting at West Street, so by indirection we get exactly what we are seeking to avoid.

If Mr. Phillips wishes a voir dire with respect

to these particular questions outside the hearing of the jury to assure himself that counsel is not misleading him with respect to what might otherwise be a fruitful area of cross-examination, I have no objection. My information is he only knows them from West Street and I would object to any question which would intimate directly or indirectly that that was their association.

THE COURT: I understand.

I assume you have questions going before this.

MR. PHILLIPS: Yes. But Mr. Lopez indicated that this witness never went to West Street until October or November, and if I say prior to June, 1973, I don't see how that in any way implies --

THE COURT: When did this fellow plead?

MR. LOPEZ: January 4, 1973.

MR. PHILLIPS: I will make it 1972 or 1971.

THE COURT: All right.

MR. PHILLIPS: Or 1970.

(In open court.)

CROSS EXAMINATION

BY MR. PHILLIPS:

Q Mr. Di Benedetto, you say you were in the shylocking business, is that correct?

A Yes, sir.

Q Is it fair to say that the shylocking business consists of loaning out money at usurious rates?

A Yes, sir.

Q Would you explain to the jury what the word "usurious" means?

MR. ROSENBERG: Objection.

THE COURT: Yes. I don't think we need to explain that to the jury.

Go ahead, ask the next question.

Q What was the rate that you were charging people that you were loaning money to?

MR. ROSENBERG: Objection, your Honor.

THECOURT: No, I will permit that.

Q Would you answer the question?

A Excuse me?

Q What was the rate that you were charging people money, people that you were loaning money to?

A Well, if it was a thousand dollars, it would be $13,000, $50 a week, 26 weeks.

Q If you loaned out $1000, what was the interest or what was the amount that you were charging in the way of interest rate?

A $300.

Q Per what?

A It would be on 26 weeks, $50 a week.

Q $50 per week? That's all?

A Yes, sir.

Q You are sure about that?

A Yes, sir.

Q And how long were you in this business?

A 1969, '70, '71 and part of '72.

Q And was your partner in this business Joseph Di Napoli?

A I worked for Joseph Di Napoli, yes.

Q He was not your partner, then?

A No, sir.

Q How much did he pay?

A $200 a week.

Q $200 per week?

A Yes, sir.

Q And you made collections, I believe you said, on direct examination for Mr. Di Napoli, is that correct?

A Yes, sir.

Q From how many people?

A Oh, it varied. It would vary every week. Sometimes five, sometimes six, sometimes seven.

Q Let us take the year 1970. Do you recall how many collections you made during that year?

A No, I can't recall how many collections I made in the year.

Q Do you recall how many people at any one time Joseph Di Napoli was loaning money to?

A I only know the ones I collected from, I don't know who he collected from.

Q Did he have other people collecting money for him, too?

A Yes, one other person that I know of.

Q Who was that?

A David Whitner.

Q Was there anybody else?

A Not that I know of.

Q How much money did you collect from Mr. Di Napoli during the year 1970, if you can recall?

A I don't remember the figure.

Q You can't estimate it?

A I can't really say. I know, like, from one customer, like, David Shitner, it would vary. He could give you $1500 a week.

Q And how did the money get -- from whom did these individuals borrow the money?

A Well, most of the times from Joseph Di Napoli.

Q Directly?

A Usually, yes, sir.

Q That is, the borrowers would go directly to Di Napoli to borrow the money, is that correct?

A Or I would give it to them.

Q And when you gave it to the borrowers, did you get it from Di Napoli?

A Yes, sir.

Q And generally how much was loanedout to the borrowers?

A It would be according to the person. Sometimes a thousand, two thousand, maybe ten thousand.

Q And the same interest rate was charged in each case?

A Yes,sir.

Q And you would collect the interest rate on a weekly basis, is that correct?

A Yes, sir.

Q Where did Mr. Di Napoli get the money that he was loaning out?

MR. LOPEZ: Objection, your Honor. How would he know?

THE COURT: Do you know?

THE WITNESS: No, sir.

THE COURT: All right.

Q Did you ever find out?

A No, sir.

Q Did you ever ask Mr. Di Napoli?

A No, sir.

Q I take it that is true of all the years you are talking about, '69, '70,'71, and part of '72?

A Yes, sir.

Q By the way, do you know Vincent Papa?

A Excuse me, sir?

Q Do you know a Vincent Papa, Vinnie Papa?

A Yes, sir.

Q You do know him?

A Yes, sir.

Q Is he from Long Island?

A I don't know where he is from.

Q Is he from Queens?

A I don't know where he's from.

MR. ROSENBERG: Objection, if your Honor please. There is no connection between Vincent Papa and this witness that I can see at this time.

THE COURT: No, I will permit it.

Q Was he in the shylocking business?

A I don't know.

Q Were you known as Little Joe?

A Yes, sir.

Q Was Joseph Di Napoli known as Big Joe?

A Yes, sir.

Q But you weren't partners?

A No, sir.

Q By the way, these interest payments, were they known as vig?

A Vig? No, they were interest payments.

Q The word "vig" doesn't mean anything to you? A vig isn't an interest payment.

Q What is vig?

A A vig is a miss. If a person didn't pay the $50, he paid $5 vig.

Q And the $5 represents vig, is that correct?

A Yes, sir.

Q What do you call the $50 interest payments?

A Payment.

Q You don't call it vigorish payments?

A No.

Q When you talk about $50, you are talking about a $1000 loan, isn't that correct?

A Yes, sir.

Q If it was, for example, a $4000 loan, it would be $200 weekly payment, is that correct?

A It could be or it could be $400 payment.

Q Did Di Napoli pay you a salary for what you did for him, that is, make these collections?

A Yes, sir.

Q What was the salary?

A $200 a week.

Q Did you have any legitimate employment?

A Excuse me?

Q Did you have any legitimate employment during these years?

A Yes, all my life.

Q During the years '69, '70, '71, and part of '72 you had legitimate employment?

A Yes, sir.

Q And during that period of time, were you part-owner of the cottage inn?

A Yes, sir.

Q Was Joseph Di Napoli a part-owner with you?

A No, sir.

Q You are sure of that?

A Positive, sir.

Q Did any narcotics transactions ever go down in the Cottage Inn?

A Not to my knowledge.

Q You don't know a man by the name of Frank Facchiano?

MR. LOPEZ: Objection, your Honor. It is immaterial. Frank Facchiano is not named as a conspirator. We don't know who he is.

THE COURT: I will sustain it.

Q By the way, during this period of time, these years you are talking about, what kind of car did you drive?

A '69 and '70?

Q Yes.

A I had an Oldsmobile, a '64 Oldsmobile and a '62 Ford. I would borrow cars too. I would use my mother's car.

Q All these cars were in your name?

A No, sir.

Q The '64 Oldsmobile?

A That was in my name, yes, sir.

Q How about in 1971 and 1972; what kind of cars did you drive?

A I drove a Cadillac.

Q What year Cadillac was that?

A I drove a '69 or a '71.

Q Did you pay cash for it?

A One didn't belong to me, no.

Q Who did it belong to?

A My mother.

Q Did you buy it for her?

A No, sir.

Q You said you had a '69 Cadillac?

A That was my mother's.

Q And a '71 Cadillac?

A Yes, I had a '71. Yes, I had a '71.

Q That was your own? That was your own?

A Yes, sir.

Q You purchased that yourself?

A Yes, sir.

Q Did you purchase it with cash?

A I don't think so. I don't remember, really.

Q How about Joseph DiNapoli, what kind of car did he have?

A I really don't know. I think he had a -- I think he had a Cadillac.

Q New Cadillac?

A I don't remember if it was a new one or not.

Q During 1970, '71 and '72 did you know Angelo Marone?

A 1970, '71 and '72?

Q Yes.

A Yes, sir.

Q Did you see him in the Cottage Inn from time to time?

A Occasionally.

Q You saw DiNapoli there too, didn't you?

A Yes, sir.

Q How about Gigi Inglese, did you know him in '70, '71 and '72?

A When you say know, I didn't know him; I saw him.

Q You say you lived at 1908 Bronxdale Avenue, is that correct?

A Yes, sir.

Q That was during 1971?

A No, sir.

Q When was that, what year?

A 1963 to 1969.

Q And you moved out, is that correct?

A Yes, sir.

Q And you had occasion to go back there from time

A Yes, sir.

Q Were you there on the evening of February 3, 1972?

A Yes, sir.

Q What time did you arrive?

A Somewheres between 12:30 and 1 o'clock.

Q In the morning?

A Yes, sir.

Q Who was there when you arrived?

A Vincent DiNapoli, Gene Patalano, a girl Ann and a fellow George and myself.

Q Was it George Rossi?

A Yes, sir.

Q Was Vincent DiNapoli Joseph DiNpaoli's brother?

A Yes, sir.

Q Could you describe him for us, please, what he looks like?

A About six-one, six-two, 280 pounds, glasses.

Q Some time after you arrived -- by the way, is he in the Shylocking business too, Vincent DiNapoli?

A Not that I know of.

Q Some time after you arrived did some federal agents arrive with a search warrant?

A Yes, sir.

Q Were you placed under arrest at that time?

A No, sir.

MR. LOPEZ: Objection, your Honor. He has answered "No, sir."

THE COURT: He has answered "No." I assume the objection is withdrawn, right?

MR. LOPEZ: Excuse me, your Honor?

THE COURT: I said I assume the objec is withdrawn.

MR. LOPEZ: Yes, I withdraw it answered.

Q Are you able to estimate at detto, how many people you took coll the year 1970, just that year alo

A No, sir.

Q You have no idea

A I can't recall

Q Was it as r as a hundred

A Are you king weekly, yearly

Q I am q about weekly tions.

A No.

Q Isn't that at you told us you did for

DiNapoli?

A Yes. When you say for the year, I only collected from certain people every week.

Q And can you tell us for that year approximately how many people you collected money from on behalf of Joseph DiNapoli?

A Well, like I said, I only collected from a steady six, seven people, eight people.

Q For the year 1970?

A Yes, sir.

Q And was that true for the year 1971?

A Approximately.

Q And 1972 was it the same people?

A No. 1972 I didn't much collecting at all.

Q But the same people you collected from in 1971 --

MR. PHILLIPS: Withdrawn.

Q The people that you collected from in 1971, were they the same as the people you collected from in 1970?

A More or less, yes.

MR. PHILLIPS: May I have a moment, your Honor?

THE COURT: Yes.

(Pause.)

Q How did you first meet Vincent Papa?

MR. ROSENBERG: Your Honor, I am going to object to this.

THE COURT: No, I will permit it.

A Would you repeat the question, please.

Q How did you first meet Vincent Papa?

A I met him in 1969 or '70 in --

Q Who introduced you to him?

A Joseph DiNapoli.

Q And where did you first meet him?

A On Westchester Avenue in a printing store.

Q Where is that located, do you recall?

A In the Pelham Bay area.

Q Do you know the address?

A No, I don't.

Q Have you ever heard of a placed called Lo Piccolo, an expresso coffee house?

A Yes, I've heard of it.

Q Was it near there?

A About five, six blocks, seven blocks past it.

Q How many times after the first time that you were introduced to Papa by DiNapoli did you see Papa and DiNapoli together?

A Not many times at all.

Q Did the individuals that you collected money from always pay on time?

A Yes, sir.

Q Always did?

A Most of the times, yes, sir.

Q You are sure about that? I asked you if you always did, not if they --

A Not always, no. Sometimes they would be a few days late or a week late.

Q And if they were late what would you do?

A Absolutely nothing.

Q Was one of the people that you collected from an individual by the name of Robert Worms?

A Yes, sir.

Q Was he always on time?

A Usually.

Q Was there ever a time that he wasn't on time?

A Yes, sir.

Q And did you or Joseph DiNapoli ever threaten him if he didn't make his payments on time?

MR. LOPEZ: Objection, your Honor.

THE COURT: Sustained.

Q Do you recall the largest sum of money that was ever loaned out by Joseph DiNapoli through you?

A Through me? Well, I know Whitner had somewheres in the area of about 100,000.

Q How about yourself?

A Excuse me? The largest I ever gave?

Q That's correct.

A I've given him 10,000 at a clip.

Q That is the highest that you ever loaned out to an individual that came from DiNapoli?

A Myself, yes, myself.

Q Did you ever ask DiNapoli where he got that money from?

A No, sir. A No, sir.

MR. PHILLIPS: I have nothing further, your Honor.

MR. LOPEZ: No further questions, your Honor.

MR. ELLIS: I have, your Honor.

THE COURT: All right.

CROSS EXAMINATION

BY MR. ELLIS:

Q Mr. DiBenedetto, my name is Robert Ellis and I am the attorney for Angelo Mamone.

Can you tell us what the Cottage Inn is?

A It's a bar.

Q Where is it located?

A 816 Van Nest Avenue in the Bronx.

Q It is frequented by the people in the neighborhood and all kinds of people and whoever chooses to enter it, is that correct?

A Yes, sir.

Q What did Mamone do when you saw him there?

A Drank like everybody else.

Q He would drink and leave, is that correct?

A Yes, sir.

Q Did you ever see him do anything else there?

A No, sir.

MR. ELLIS: No further questions.

THE COURT: All right. Does anybody else wish to inquire?

All right, Mr. DiBenedetto, step down, please.

(Witness excused.)

THE COURT: Mr. Warner, you may proceed.

MR. WARNER: Your Honor, the defendant calls Mr. Rafael Sanchez.

(Pause.)

RAFAEL SANCHEZ, called as a witness by the defendant Ceriale, being first duly sworn, testified as follows:

THE COURT: Mr. Warner, you may inquire.

DIRECT EXAMINATION

BY MR. WARNER:

Q Mr. Sanchez, where do you live?

A --New Jersey, Avenel, New Jersey.

Q And what is your age?

A Forty-three.

Q Are you married?

A Yes, sir.

Q How long have you been married?

A Almost 18 years.

Q Do you have any children?

A Yes, sir, six.

Q Mr. Sanchez, where do you work at the present time?

A I work for the City of New York Housing and Development Administration, emergency repair program.

Q How long have you been working there?

A Almost eight years.

Q Do you have a particular title for the work that you do at this time?

A Yes. I am the executive administrative assistant for personnel.

Q Mr. Sanchez, do you knos Joseph Ceriale?

A I do.

Q Do you see him in court?

A Right there.

Q Is Mr. Ceriale --

THE COURT: The record will reflect that the witness did identify Mr. Ceriale.

Go ahead.

Q Is Mr. Ceriale now working at the Housing and Development Administration?

A Yes, sir.

Q Could you tell the court what his duties are, what his work is?

A Mr. Ceriale I believe is a senior repair crew chief with the emergency repair program, the workshop section. That's the Harlem -- East Harlem workshop.

Q You mean going out and making emergency repairs?

A Yes, he makes repairs, yes, emergency repairs.

Q Mr. Sanchez, by the way, were you ever connected with the Model Cities Program?

A Yes, I was at one time.

Q The Model Cities Program is a part of the HDA, is that right?

A That'sright.

Q At the time that you were connected with the Model Cities Program were you a supervisor or the supervisor of Mr. Ceriale?

A I was.

Q What period was that?

A November 1st through March 30th, November 1, 1971 through March 30, 1972.

Q Had Mr. Ceriale been working there prior to the time that you were his supervisor? [illegible]

A Yes, sir.

Q During the period that you were his supervisor how often did you see Mr. Ceriale?

A Every day.

Q How was his attendance?

A Well, during the time I was there it was all right.

Q It is still all right, isn't it?

A Yes.

Q In fact, since the time that you were his supervisor up to the present he has had practically no

absences, isn't that correct?

A Just about, yes.

Q Mr. Sanchez, at any time that you have seen Joseph Ceriale did you ever see him with red hair?

A No, sir.

Q At any time that you have seen Joseph Ceriale did you ever see him with hair that was tinted red?

A No, sir.

Q Finally, Mr. Sanchez, did you ever hear Mr. Ceriale called Joe Red?

A No, sir.

MR. WARNER: No further questions.

THE COURT: All right. Do you have any cross?

MR. PHILLIPS: Yes, I do, your Honor.

CROSS EXAMINATION

BY MR. PHILLIPS:

Q Where does Mr. Ceriale live, do you know, Mr. Sanchez?

A I do not know, sir.

Q You have no idea?

A Not right now, no, sir.

Q Do you supervise Mr. Ceriale?

A I did supervise Mr. Ceriale?

Q When?

A In the period I mentioned before, November 1, 1971 through March 30, 1972.

Q Did he always work with you, that is, physically next to you or with you during the day?

A Well, I dispatched him.

Q You dispatched him?

A Yes, sir.

Q To go do a certain job?

A Yes, sir.

Q Did you follow him to the job?

A No, sir. No, sir.

Q Do you know where he went during the day?

A Yes, sir.

Q That is because he told you where he went, is that correct?

A No. Because Idirected him to go there.

Q You didn't follow him there?

A No, sir.

Q How long a lunch hour did he have?

A One hour, like every city employee.

Q Do you know where he spent his lunch hour?

A No, sir.

Q Did his jobs carry him around throughout the

City of New York?

A In the Harlem area.

Q Just in the Harlem area?

A Yes, sir.

Q You are sure about that?

A Yes, sir.

Q Is that the East Side or the West Side?

A The Model Cities area covers both West and East Side, between Cathedral,. I think it is, and the East River, and from 110th Street up to about 135th Street.

Q You know where Pleasant Avenue is, don't you?

A I have heard of it, yes. I have [illegible]

Q Isn't it right over near the East River, the FDR Drive?

A Yes, sir.

Q It is between First Avenue and the FDR Drive, isn't it?

A Yes, sir.

Q It goes from approximately 114th Street to 118th Street?

A Yes, sir.

Q So the area thatyou just described includes Pleasant Avenue then, doesn't it?

A Yes, sir.

Q Did Mr. Ceriale go by any other name, to your knowledge?

A To my knowledge, no, sir.

Q Has he ever gone by the name Joe Dean?

MR. WARNER: Asked and answered, your Honor.

THE COURT: No, I will permit it.

A Did he ever go by what?

Q The name Joe Dean.

A No, sir. I know him as Mr. Ceriale.

Q How about Joe D.?

MR. WARNER: Same objection.

A Mr. Ceriale.

Q You never --

A My connection with this man is my name is Mr. Sanchez, this is Mr. Ceriale, and that's the extent.

MR. PHILLIPS: I have nothing further, your Honor.

THE COURT: All right. Anybody else wish to inquire?

All right. Step down.

(Witness excused.)

THE COURT: Call your next witness.

MR. WARNER: Frank Cermak.

F R A N K C E R M A K, called as a witness by the defendant Ceriale, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WARNER:

Q Mr. Cermak, where do you live?

A I live at 118 East 60th Street, Manhattan.

Q And how old are you?

A I am 61 years old.

Q Would you tell the court your marital status?

A I am a widower.

Q Do you have any children?

A I have two children.

Q Mr. Cermak, where are you employed?

A I am employed by Washburn Wire Company.

Q How long have you been employed there?

A Thirty-seven years.

Q Does your position have a title?

A Yes. I am superintendent of round wire.

Q Mr. Cermak, do you know Joseph Ceriale?

A I do.

Q Do you see him in court?

A Yes, I do.

Q Could you point him out?

A He is over there, just stood up.

MR. WARNER: May the record reflect that Mr. Cermak has indicated Mr. Ceriale.

Q Mr. Cermak, did Mr. Ceriale ever work at Washburn Wire Company?

A Yes, sir.

Q Did he work there from about January, 1966 into the latter part of 1970?

A Yes, sir.

Q What was his work?

A He worked several jobs, but mostly as a furnace man.

Q Furnace man?

A Furnace man.

Q What was your position in relation to Mr. Ceriale during that time? Were you his supervisor?

A I was his supervisor.

Q How was his attendance, Mr. Cermak, his coming to the jhob? He came regularly?

A He was very good..

Q Did he work overtime as well?

A Yes, he worked a great deal of overtime.

A He was a hard worker?

Q During the period that he was at Washburn Wire Company, Mr. Cermak, how often did you see him?

A Well, he worked on rotating shifts, so I saw him probably three or four times when he was on the day shifts and --

Q Three or four times a week?

A Three or four times a day -- and possibly twice when he was on the second shift, and I did not see him at all the midnight shift.

Q Is that through the entire period?

A That's right.

Q Mr. Cermak, at any time that you have seen Joseph Ceriale have you ever seen him with red hair?

A No, sir.

Q At any time that you have seen Joseph Ceriale have you ever seen him with his hair tinted red?

A No, sir.

Q Mr. Cermak, did you ever hear Joseph Ceriale called Joe Red?

A No, sir.

MR. WARNER: Thank you. No further questions.

CROSS EXAMINATION

BY MR. PHILLIPS:

Q Mr. Cermak, where is the Washburn Wire Company located?

A Between 116th Street and 119th Street, FDR Drive.

Q You mean it is located on the FDR Drive?

A Yes. We have a dock on the other side of the drive.

Q And where is Pleasant Avenue in relation to your company?

A It is the next block up from FDR Drive?

Q Did he work there during the day? Mr. Ceriale I am talking about.

MR. WARNER: Your Honor, "there" is not clear.

THE COURT: You mean at the Washburn Wire Company?

MR. PHILLIPS: Yes.

THE COURT: I think he testified he had rotating shifts, unless I misunderstood.

Is that correct?

THE WITNESS: That's correct.

Q Those shifts also included a day shift, did they?

A Yes, sir.

Q You don't know where he spent his lunch hour, did you?

A He spent it on his job. We had no lunch hour as such. They get 20 minutes on the job to eat.

Q They get 20 minutes on the job to eat?

A Yes.

Q And they are not entitled to go anywhere?

A They don't leave the plant.

Q How often did he work the night shift?

A Usually every third week.

Q What is the night shift, what hours?

A Eleven o'clock at night till 7 a.m. in the morning.

Q And every third week he would work that, is that correct?

A That's correct.

Q The other two weeks he was working the day shift?

A No, the other two weeks he worked from 7 a.m. to 3 p.m. -- that would be the day shift -- and the afternoon shift would be from 3 to 11 p.m.

Q So he would work from 3 p.m. to 11 p.m. every third week?

A That's correct.

MR. PHILLIPS: I have nothing further, your Honor.

THE COURT: Anybldy else wish to inquire?

All right. Step down.

(Witness excused.)

THE COURT: Do you have another witness?

MR. WARNER: One more, your Honor.

THE COURT: All right.

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RICHARD MOLITERNI, called as a witness on behalf of the defendant Ceriale, being first duly sworn, testified as follows:

MR. WARNER: Your Honor, may I proceed?

THE COURT: Yes, go ahead.

DIRECT EXAMINATION

BY MR. WARNER:

Q Mr. Moliterni, where do you reside?

A 2440 Sedgwick Avenue, in the Bronx

Q And how old are you?

A 60.

Q Are you married?

A Yes.

Q How long have you been married?

A 36 years.

Q Do you have any children?

A I have one daughter.

Q Are you employed at the present time?

A Yes.

Q What is your employment?

A I am a plasterer by occupation, but right now I am the secretary-treasurer of my union, Plasterers Local No. 60.

Q How long have you held this position, secretary-

treasurer?

A 19 years.

Q Since approximately 1954, is that?

A I went in in November of 1954, yes.

Q Mr. Moliterni, do you know Joseph Ceriale?

A Yes, because he was a member of my union, yes.

Q Do you see him in court?

A Yes, I see him, over there.

MR. WARNER: Your Honor, the record should reflect that Mr. Moliterni identified Mr. Ceriale.

Q Mr. Moliterni, when did you first meet Mr. Ceriale?

A I first met him on the job where I was working. It was I think the Metropolian Museum on 81st Street and Fifth Avenue.

Q About when was that?

A I don't know if it was '51 or '52. He was then an apprentice and I knew him as an apprentice on that job.

Q And then he became a member of the Plasterers Union?

A Yes, then he became a journeyman, yes.

Q Mr. Ceriale is not now a member of the Plasterers Union?

A No, he is not.

Q Until what date did he continue as a member of the Plasterers Union?

A I think till about 1969.

Q During the time that you were secretary-treasurer Mr. Ceriale would come to see you to pay dues, is that correct?

A He would come up occasionally, yes, and other times he would send it in by mail. But sometimes he would come up personally, yes.

Q During the period that he was a member of the union approximately how often did you see him?

A Well, I would guess maybe three, four times a year.

Q Mr. Moliterni, at any time that you have seen Mr. Ceriale did you ever see him with red hair?

A No, I never have.

Q At any time that you have seen Mr. Ceriale did you ever see him with his hair tinted red?

A No, I never have, no.

Q And finally, Mr. Moliterni, did you ever hear Mr. Ceriale called Joe Red?

A Not in my presence, no.

Q Did you ever hear of him being called Joe Red?

A Never.

MR. WARNER: No further questions.

CROSS EXAMINATION

BY MR. PHILLIPS:

Q Mr. Moliterni, did you ever hear Mr. Ceriale called Joe Dean?

A No, counsellor. I always knew him as Joe.

Q How about Joe D?

A I never have, no.

MR. PHILLIPS: Nothing further, your Honor.

THE COURT: Anybody else wish to inquire?

All right, sir. Step down.

(Witness excused.)

MR. WARNER: Your Honor, I have a document that I would like to put into evidence and have the jury examine.

THE COURT: All right. We are not going to do it right now.

Marshal, I don't want the jury taken away. I just want them to leave. I want to talk to the attorneys, take a look at this document, and have them come back.

MR. WARNER: If your Honor wishes to excuse the jury for today I could introduce this tomorrow morning.

THE COURT: No, no.

(Jury left the courtroom.)

THE COURT: Let me go around the room here and

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find out where we are going in this case. Unfortunately, I have a feeling that I have run out of the urge to come in and be surprised every day.

Mr. Siegal, on behalf of Mr.Tramunti, do you intend to put on a defense?

MR. SIEGAL: No. I have been resting all eight weeks. I rest.

THE COURT: Mrs. Rosner, do you intend to put on a defense on behalf of Mr. Inglese?

MRS. ROSNER: I would reserve my right, your Honor, to call one or two witnesses. It would not consume more than a half-hour of the Court's time.

THE COURT: Mr. Lopez, have you finished?

MR. LOPEZ: Not yet. Possibly one more witness, your Honor, and two stipulations.

THE COURT: Is that the contractor?

MR. LOPEZ: No. We are finished with the wall, your Honor.

THE COURT: All right. Mr. Rosenbaum.

MR. ROSENBAUM: I may have one witness on behalf of the defendant D'Amico.

THE COURT: Mr. Sunden.

MR. SUNDEN: I don't plan to put in any defense

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unless some situation arises that might necessitate it. But not now.

THE COURT: All right. So you are going to rest.

Mr. Fisher.

MR. FISHER: Yes, your Honor. I intend to offer some stipulations, assuming the non-truculence of the government, and that should take about five minutes.

THE COURT: Can you clue us in now as to what they are?

MR. FISHER: Yes, your Honor. They include the offer of the tape recorder allegedly used by Barnaba on the fateful night of November 22nd which the government I am told will represent was the precise machine used together with certain stipulations regarding the accuracy of transcripts of debriefing tapes of the witness Stasi.

THE COURT: And that's it?

MR. FISHER: Yes, sir.

THE COURT: Mr. Ellis.

MR. ELLIS: Your Honor, at this time I probably will put on one witness of relatively short duration and that single stipulation we talked about this morning.

THE COURT: Mr. Rosenberg, I assume you have rested.

MR. ROSENBERG: Yes, sir.

THE COURT: Mr. Warner.

MR. WARNER: Your Honor, I did subpoena certain other documents. Again, it would take five minutes to put them in if they come. Otherwise, I won't have anything else.

THE COURT: In connection with Mr. Warner's case, has the government seen the discharge papers?

MR. PHILLIPS: Yes, we have, your Honor. We do not contest the authenticity of the papers, but we strenuously object to their admissibility on the grounds of relevancy.

THE COURT: No, I will permit them in. There is one entry there which is most relevant to this case.

MR. PHILLIPS: May I see the document?

THE COURT: Sure. Mr. Richman, on behalf of Mr.Tolopka, although you did not use the formulation normally heard in this court, I assume that you have rested.

MR. RICHMAN: That's correct, sir.

THE COURT: Mr. Curley, on behalf of Mr. Marchese, do you intend to put in a case?

MR. CURLEY: No, your Honor. I assume we will have no problem --

THE COURT: Look, if you are surprised --

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MR. CURLEY: I am talking about what Mr.Fisher mentioned, the accuracy of the debriefing tapes. I don't anticipate any problem. I don't think there will be any.

THE COURT: I don't think there will be. If there is, you are surprised, I will try to be reasonable.

MR. CURLEY: Some of them refer to a voice.

THE COURT: You can work something out.

Mr. Dowd. He indicated to me before that he was resting.

MR. CURLEY: I believe that is the current posture.

THE COURT: Mr. Leighton.

MR. LEIGHTON: We are resting at this time, your Honor.

THE COURT: All right. I was about to call for Mr. Schwartz. He rested some time ago.

Mr. Panzer.

MR. PANZER: I will have several witnesses, your Honor.

THE COURT: Mr. Martin J. Siegel.

MR. SIEGEL: Your Honor, I may have one,possibly two witnesses.

THE COURT: Mr. Pollak.

MR.POLLAK: One witness, your Honor.

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THE COURT: Mr. Lopez, Mr. King came to me this afternoon and told me that you agreed to cover for him while he went to that medical appointment.

MR. LOPEZ: Yes. He is resting.

THE COURT: Mr. Gamba, is that correct?

MR. GAMBA: Yes, as of our last communication, your Honor.

THE COURT: And you agreed to have Mr. Lopez represent you during this period?

MR. GAMBA: Yes, sir.

THE COURT: All right. Let me get the jury out and tell them.

MR.PHILLIPS: One thing, your Honor. With respect to Defendant Ceriale's Exhibit A for identification, I assume that the relevant entry here is the color of Ceriale's hair. The government would be willing to stipulate that the date that this document was made the defendant's hair was brown.

What we object to is Mr. Ceriale putting in his character through this document without either Mr. Ceriale or the character witness taking the witness stand. I say that the character is being put in evidence through this report of an honorable discharge from the Service.

MR. WARNER: Your Honor, I disagree with that,

because the fact is that the notation of an honorable discharge has no relationship to character, truth and veracity, or any of the other relevant factors.

THE COURT: Yes. I will let it go in. Ceriale's Exhibit A, whatever it is, canbe received. The only thing I suggest is that someone undertake to scotch tape the thing back together again.

xx (Defendant Ceriale's Exhibit A received in evidence.)

THE COURT: Yes, Mr. Sunden.

MR. SUNDEN: Does your Honor have any thoughts on whether you are going to be on trial here on Saturday?

THE COURT: I am not going to be on trial here, but you might be.

It all depends. If we are still taking testimony we will do it. If all testimony is finished by Friday afternoon, I have to have some time to work on a charge. I have physical limitations as much as everybody else, so it is entirely up to the defense.

I am not forcing anybody into cutting down their defense in any way. You know I will be overjoyed to sit on Saturday, but it is the same kind of a joy that you folks feel.

Yes, Mr. Curran.

MR. CURRAN: Do I understand from what your Honor just said that if testimony finishes on Friday or on Saturday that summations in either case --

THE COURT: Begin on Monday.

MR. CURRAN: They will not start on Saturday?

THE COURT: No, they will begin on Monday.

MR. CURRAN: Your Honor, might I respectfully

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urge that your Honor's charge will come in any case, I assume, after Sunday with all the summations, 17 plus one from the government.

THE COURT: I assume you would like me to listen to them. Very honestly, what am I supposed to do, shut off my ears and sit here and write out my charge, and if somebody jumps up and says "Objection," I will say, "Read me back the last hour of what happened so I can put it in focus"? I can't do it.

MR. CURRAN: I was pointing to Sunday as a free day in any case.

THE COURT: Yes. THE COURT: Yes.

MR. RICHMAN: Your Honor, might I inquire if the government intends to put any rebuttal witnesses on.

THE COURT: They can't know until they see, for example, Mrs. Rosner has one or two witnesses. How do I know?

MR. RICHMAN: Just checking, your Honor.

THE COURT: They can't at this point know. All right. We have gotten squared away with the defendants who are resting presently and we have got squared away, I hope, as to how many witnesses we are going to have. It looks to me like you gentlemen

and you, Mrs. Rosner, can finish this thing by Friday with a little bit of luck. Yes or no?

Let us put it this way: I have given up on asking for estimates from anybody who has ever at any time even attempted to take the bar examination. All right.

I am going to tell the jury out of your hearing that this document they can take a look at tomorrow and everybody else can leave.

(Adjourned to February 28, 1974 at 10:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Benjamin Tolopka (Resumed)		3895		
Frank Malerba (Recalled)	3960 3983	3966 3986		
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Denice B. Sabella	3997	4002		
Sylvester Malangone	4007	4008		
Joseph DiBenedetto	4118	4129		
Rafael Sanchez	4147	4150		
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EXHIBIT INDEX

	Identification	In Evidence
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Defendant Tolopka		
J	3984	3985
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D,H,M,N		4001
Defendant Ceriale		
A		4169

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BE 3-0386

UNITED STATES OF AMERICA
vs.
CARMINE TRAMUNTI, et al. 73 Cr. 1099

New York, February 28, 1974;
10.00 A.M.

Trial resumed.

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(In the robing room.)

MR. RICHMAN: Your Honor, I have asked that my client be brought into chambers as well.

If the Court pleases, yesterday while we were engaged in the conduct of our direct an agent from the Drug Enforcement Administration, one Torrey Shutes, together with George L. Johannsen, a State Trooper, went to the home of Ben Tolopka and, to the best of my knowledge, without a warrant, entered the house. His wife was there alone. They scared the wits out of her, took the keys to the car in question, removed the contents, except for $250 in cash, $200, which is still missing, and left with the car, alleging that it was a car that was stolen in 1970.

I call this to your attention for various reasons. One, I consider this harassment on the part of the government, notwithstanding their allegation that it was not a federal involvement. I say that the presence

of Mr. Shutes make it a federal interest.

It was only brought to bear based upon the fact that they knew that they would interrupt our conduct of our redirect or rebuttal which they intend to put in. It's certainly not admissible in this court, since there is no crime alleged as against Benjamin Tolopka, and has no probative value at this time.

I think it's a horrible attempt and a prosecutorial abuse, your Honor. This is a perfect example of what happened in Illinois earlier last year, where the government takes it upon themselves to walk into people's homes without warrant and effect their will.

MR. CURRAN: May I be heard, your Honor, if Mr. Richman is finished?

THE COURT: Yes.

MR. CURRAN: I am not familiar with the events of yesterday afternoon. My understanding is the car was seized. My understanding also is that the car was a stolen car.

Nothing was done during the defendant's direct case or the defendant Tolopka's case because, according to my understanding, at least, the car was not seized until yesterday afternoon.

Moreover, your Honor, I would submit that this

is a state crime and under state law, as I understand it, the State Police have a right, if not a duty, indeed they had a duty, to seize the car, which was done.

There is no question of harassment at all here, your Honor. I said the defendant's case was completed. With respect to Mr. Richman's statement about what we are going to do in rebuttal, I hardly think he would know that because I don't know myself at this point.

If there is some legal question before your Honor as to whether Mr. Tolopka was aware that this was a stolen car should come up in rebuttal, so be it. I submit to your Honor, however, that question would come up whether or not the car was seized yesterday.

In any case, I spoke to Mr.Richman last night. He called me at 6.25. It seems to me if Mr. Richman is complaining about the action of State Police and suggesting that the car was improperly seized Mr. Richman has a number of remedies which he may pursue.

MR. ELLIS: Your Honor --

MR. CURRAN: Just in closing, your Honor, it seems to me the State Police have a right to seize this car whenever they have reasonable grounds to believe that it was stolen.

I don't intend to discuss the state law with

your Honor because, one, I am not familiar with it, and, two, it is certainly not an issue in this case.

The reference, incidentally, to Illinois, your Honor, is fully without any basis, because I represent to the Court according to my information the car is a hot car and has been since Mr. Tolopka purchased it or shortly before Mr. Tolopka purchased it.

MR. RICHMAN: Your Honor, there is no warrant here. They barged into a house where a woman who is obviously quite ill was sitting by herself. She is totally hysterical. She has been sick ever since. This is a person who has had a heart attack and a stroke.

The government is so cavalier with people's lives, as they seem to be, I think it smacks, if you will pardon the expression, of Gestapo tactics, and somewhere along the line I believe it is the job of the judiciary to put a stop to this.

MR. CURRAN: Your Honor, in response to these kinds of smear words, which are whollly irrelevant and out of order in this fact context, I say again my information is this was done by State Police officers in the performance of their duties and I submit to your Honor that they had an obligation to do what they did. I don't know for a factwhether Mr. Shutes was present or not and I

suggest, your Honor, it makes no difference in the posture of this case whether he was or not. It's a state action. I understand that they did what they did because they felt an obligation to do it.

THE COURT: You sant to say something?

MR. ELLIS: Yes, your Honor. I heard this morning from Mr. Richman that it was Mr. Curran's intention to attempt to introduce either this car or some information that Tolopka was in possession of a stolen car as evidence into this case. Now, if that is true, I would strenuously object, your Honor.

THE COURT: Let's take that one up when we get to it.

MR. ELLIS: Yes.

THE COURT: Basically, it sounds to me like this is a situation where the state police acted and there is very little I can do about it.

MR. RICHMAN: Your Honor, they did at the behest of the United States Attorney's Office or their representatives. I suggest to your Honor that such action, the only intent that possibly could be would be to harass us.

MR. CURRAN: Your Honor, I am not going to get into a discussion of those facts, but Mr. Richman, talking about being cavalier, makes a statement that it was at the behest of the United States Attorney's Office or their representatives. He has absolutely no proof of that. If we want to get into a hearing

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on that now it is totally out of order.

THE COURT: Not now.

MR. RICHMAN: Further, I want to inform your Honor if the U. S. attorney attempts to introduce this element into the case I would point out to your Honor Mr. Tolopka has not been charged with a crime. If it is their intention --

THE COURT: I will take that up.

MR. RICHMAN: I want to tell your Honor if he attempts to get it in I want to request a week's continuance so I can prepare my defense.

THE COURT: We will take that up?

MR. RICHMAN: Your Honor, Mr. Warner will be covering for me until the rebuttal comes on.

MR. ELLIS: Judge, may I go off the record for a moment?

THE COURT: Sure.

(Discussion off the record.)

(In open court; jury not present.)

THE COURT: It is my understanding with the exception of certain stipulations which are being worked out between the government and the defense all of the defendants rest with the exception of the defendant Henry Salley and the defendant Hattie Ware.

Is that correct?

MR. ELLIS: Your Honor, we have a documentary offer to make.

THE COURT: Yes, I understand. That is going to be stipulated in, I gather.

MR. ELLIS: Yes, sir.

MR. CURRAN: Yes.

THE COURT: You object to the relevancy?

MR. CURRAN: Yes.

THE COURT: And I say it is relevant. Therefore, you are not going to object to it?

MR. CURRAN: That's correct, your Honor.

THE COURT: Fine.

MR. LOPEZ: That is correct, your Honor.

THE COURT: All right.

MR. FISHER: Your Honor, Mrs. Rosner may have a witness, with whom she is speaking now.

THE COURT: All right. It was my understanding that the defense was supposedly prepared to go ahead with the defense of Mr. Henry Salley this morning. The record should reflect that this court opened for business at 10 o'clock this morning and it is now three minutes past 11. Mr. Pollak, who is Mr. Salley's lawyer, has not shown up, even though his office is

located at 299 Broadway, which I will take judicial notice is approximately two blocks away from this courthouse.

I called his office and was advised by them that he had left quite some time ago. That was about 20 minutes before 11.

I avoided bringing the jury in to wait here because I felt it might cause some slight prejudice to the defendants. Truthfully, having waited an hour, I think I have been more than fair about it.

Let's see if we can right now clear up whatever stipulations we are going to have.

Hold on a second.

(Pause.)

THE COURT: The record should reflect Mr. Pollak has just arrived.

Mr. Pollak, are you prepared to go ahead with your defense now?

MR. POLLAK: I had anticipated that Mr. Panzer would go first. However, I think I can be ready.

THE COURT: All right. Let's take the stipulations first.

MR. LOPEZ: Do you have any stipulations?

MR. LOPEZ: Yes. I am offering a map of

New York City.

THE COURT: All right. The map is going to come in.

MR. LOPEZ: As Defendant's Exhibit P.

The only stipulation would be the defendant DiNapoli and the government both stipulate that the United States magistrate complaint resulting from the arrest of February 3, 1972 was dismissed on or about April 1, 1972.

THE COURT: I understand, Mr. Phillips, that is so stipulated.

MR. PHILLIPS: Yes, your Honor.

THE COURT: All right. Mr. Fisher, do you have a stipulation?

MR. FISHER: Yes, your Honor. I have a number of them which were agreed upon by Mr. Phillips and myself.

I have here the NAGRA tape recorder, which should be deemed marked, I submit, as Defendant Christiano's Exhibit A, and I would offer it before the jury, your Honor, and by way of stipulation explain how this machine was used on the night of November 22, 1972 by John Barnaba.

In addition thereto there are stipulations

concerning the debriefings of Stasi. There are four sections from the debriefing which I would read to the jury, with the stipulation that those words were spoken on the three various dates during the debriefing of Stasi.

t2a MR. PHILLIPS: Your Honor, with respect to the NAGRA recorder that was on Mr. Barr ba, we do not object to the admissibility and we stipulate as Mr. Fisher indicated.

With respect, however, to the transcript that Mr. Fisher is referring to, we also would be willing to stipulate to the accuracy of the transcript. We, however, oppose admissibility, we do not stipulate to the admissibility of the transcript. We submit that Mr. Stasi was cross examined at great length regarding his debriefing and the things that were said to him and that he said to the police officers and the detectives during the period of time that he was debriefed by Detective Whalen, Sergeant O'Boyle and others, and we would submit that it is therefore not proper rebuttal to anything that Mr. Stasi said nor admissible as part of the defense case.

MR. FISHER: In response to that, your Honor, in each instance of the offer I questioned Mr. Stasi with

regard to whether or not certain statements were made to him on the various nights of his debriefings and on each of the instances regarding those four portions I wish to offer he claimed he did not recall.

I think they are admissible as inconsistent statements. I think I could call O'Boyle or Lieutenant Whalen or whoever and I am perfectly willing to do that. I think it would just save everybody a lot of time if the court would admit these in this form.

THE COURT: I don't know what you are referring to so you are going to have to clue me in on that.

MR. FISHER: Yes, your Honor.

Specifically, on July 10, 1973, referring to the tape, the transcript of the tape marked 515, Mr. Stasi was speaking to various law enforcement agencies when he said at page 103:

"Well, he used to mix" -- this is referring to Finnegan -- "sometimes maybe once or twice.

"Voice: Finnegan, was he with you when he mixed?

"Stasi: No, never with me. I heard that he used to mix."

The court will recall, I am sure, that Stasi claims, swore that Finnegan mixed with him, and

here he is saying Finnegan never mixed with him. That is one instance.

Referring to the same tape, if your Honor please, the last line --

MR. PHILLIPS: Before we go to that, I would like to ask Mr. Fisher where Mr. Stasi on cross examination was confronted with whether or not he made this statement on that day.

MR. FISHER: I don't have it. I can find it, your Honor.

THE COURT: I will tell you what might make life a lot easier for me.

Did you mark up these things? I assume you are going to read it. You don't want the whole thing in?

MR. FISHER: No, I am going to read it.

THE COURT: You mark them up and let me have them. I have a fairly clear digest. I can find if he was confronted with these things on cross, and if I can't find it I am sure that you will take the time to find it.

MR. FISHER: Yes, your Honor.

THE COURT: Okay? Then I can rule on that part of it. The NAGRA we can have go in now.

MR. FISHER: No, your Honor, I would like to put it in all at once.

I would like to state if Mr. Phillips had been kind enough to advise me of his objection I would have had it ready now.

THE COURT: Mr. Ellis, you have moving documents.

MR. ELLIS: Yes, your Honor.

THE COURT: Okay. Those are going in as business records and I assume that the government is going to stipulate that they are business records.

MR. PHILLIPS: That's correct.

THE COURT: Okay. Mr. Rosenberg, you don't have anything?

MR. WARNER: I have the discharge papers.

THE COURT: You have the discharge papers, right.

MR. WARNER: Mr. Richman doesn't have anything. I am taking over for Mr. Richman.

THE COURT: I think that is already on the record.

Mr. Tolopka, you are consenting to it.

DEFENDANT TOLOPKA: Yes.

THE COURT: Mr. Curley, I don't think you

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have anything. You are going to sit there and be quiet.

MR. CURLEY: Yes.

THE COURT: Mr. Dowd, you don't have anything?

MR. DOWD: I don't have anything, Judge, except I think it might be appropriate to rule on the one charge which might bear on something Mr. Fisher has said about Mr. Pannirello's testimony which I submitted yesterday.

THE COURT: You mean request to charge?

MR. DOWD: Yes, which concerns affirmation of a prior statement.

THE COURT: I am afraid I guess I didn't get to it last night. I had a pile of them last night, so I can't recall.

MR. DOWD: I saw the file. I will stipulate there was a pile.

THE COURT: All right.

Mr. Leighton?

MR. LEIGHTON: Yes, sir. Nothing else. Nothing further, Judge.

THE COURT: Mr. Panzer, you are going to take up the afternoon.

Mr. Martin Siegel, do you have anything else?

MR. SIEGEL: No, your Honor.

THE COURT: Mr. Pollak, you are going to go ahead with your defense now.

MR. POLLAK: Yes.

THE COURT: All right. Did I miss anyone? I don't think so.

MR. LOPEZ: George Rosenbaum is not here and I don't think anyone is covering for him.

I don't see Gary Sunden here and I don't know if anyone is covering for him.

THE COURT: Someone indicated that they were covering for Mr. Sunden.

MR. FISHER: I will, your Honor.

MR. LOPEZ: The only thing is I don't know if either Mr. Sunden or Mr. Rosenbaum are resting. I want to make sure.

Can anyone speak for --

THE COURT: Mr. Sunden said yesterday that he was resting.

MR. LOPEZ: Mr. Rosenbaum I am not sure of.

THE COURT: Mr. Rosenbaum said he had a possibility of one witness.

MR. LOPEZ: All right.

THE COURT: All right, get the jury.

MR. WARNER: Your Honor, would your Honor like me to stand at the lectern just for the conclusion of the presentation of the document?

THE COURT: Yes.

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(Jury present.)

THE COURT: All right, ladies and gentlemen. You will recall yesterday that just before we ended we ended we had the witnesses called by the defendant Ceriale. There was also an offer of a document. I have ruled the document should be received in evidence.

Do you have that, Mr. Warner?

MR. WARNER: Your Honor, it is with the clerk.

THE COURT: Mark it received in evidence, please.

MR. WARNER: Your Honor, I have nothing further, but I would ask that the document be passed to the jury.

THE COURT: All right.

At this point you rest?

MR. WARNER: Yes.

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(Defendant Ceriale's Exhibit A received in evidence.)

(Pause.)

MR. WARNER: Your Honor, I know the jury is examining the document closely, but I wonder if I may, with the Court's permission, call the jury's attention to a certain portion of the document.

THE COURT: Yes, go ahead.

MR. WARNER: Your Honor, I would ask the Court

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to call the jury's attention to the fact that --

THE COURT: No, no, you call the jury's attention to the part you want.

MR. WARNER: I just didn't want to address the jury directly at this point.

THE COURT: That is all right.

MR. WARNER: Ladies and gentlemen, I would just like to call your attention to a portion of the documen which indicates the color of Mr. Ceriale's hair.

THE COURT: It is a numbered box, isn't it, Mr. Warner?

MR. WARNER: Yes, No. 14.

Thank you, your Honor.

(Pause.)

MR. SIEGEL: Excuse me, your Honor. While the jury is looking at that document, may I approach the bench with counsel?

THE COURT: Yes.

(At the side bar.)

MR. SIEGEL: Your Honor, I had indicated just a few minutes ago that I had nothing further. However, based on Mr. Fisher's proposed stipulation, I would have a brief stipulation which I would like to read to the jury, and that is reference to a conversation Mr. Barnaba had at the

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time of his debriefing and this was brought up during cross-examination of Mr. Barnaba.

The statement is, "Rogers: What about Hank?

"Barnaba: Hank, I mean, I would talk to, but I haven't seen him in a while.

"Rogers: You never transferred anything to Hank?

"Barnaba: No."

THE COURT: The government is going to have to look through the document and look through the cross-examination. I don't know whether they can stipulate as to that at all.

MR. PHILLIPS: I don't know, again, if he was confronted with this on cross-examination.

MR. SIEGEL: Yes, he was.

MR. PHILLIPS: Did he say he said it?

MR. SIEGEL: Yes, he said he said it, but he was holding back at the time.

MR. PHILLIPS: I don't think it is admissible.

THE COURT: Then it would not be.

(In open court.)

THE COURT: All right, Mr. Pollak, you may proceed.

MR. POLLAK: Thank you, your Honor.

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I call Mr. Henry Salley to the stand.

H E N R Y S A L L E Y, one of the defendants, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. POLLAK:

Q Mr. Salley, you are one of the defendants in this case, are you not?

A Yes, sir.

Q Are you married, sir?

A Yes, sir.

Q Do you have any children?

A One.

Q Are you presently employed,Mr. Salley?

A No, sir.

Q What is your present occupation?

A I am retired on disability from the railroad and I get a pension from the Army.

Q Before you retired, what was your occupation?

A Baggage and mail handler at Washington Terminal. That is the Union Station in Washington, D.C., work for the railroad.

Q And how long were you so employed?

A 18 years.

Q Have you ever been in Military Service, Mr. Salley?

A Yes, sir.

Q Were you overseas?

A Yes, sir.

Q And when was that, sir?

A '51, '52.

Q And where were you stationed?

A First Cav., Eighth Regiment.

Q Is that in Korea?

A Korea.

Q Did you see any combat?

A I seen combat with the First Cav. It was 100 Negroes, John MacArthur, First Cav.

Q Did you receive any decorations in the Service?

A I got three combat stars, CIB Infantry Badge and Purple Heart.

Q The Purple Heart, does that mean that you were somehow wounded in action?

A Wounded in combat.

Q Mr. Salley, I show you this paper and ask you if you can identify it?

A That's my Form 214 release from active duty.

THE COURT: All right, Mr. Clerk, mark the paper,

please.

Q And you received that paper at the time you were separated from active service, is that right?

A Active duty.

MR. POLLAK: I would offer this in evidence, your Honor.

THE COURT: First we are going to have it marked.

xx (Defendant Salley's Exhibit A marked for identification.)

MR. PHILLIPS: Your Honor, we object on the ground of relevancy.

THE COURT: All right. Does anybody else have any objections?

Now I have to see it and find out how to rule.

(Pause.)

THE COURT: It will be received.

xx (Defendant Salley's Exhibit A received in evidence.)

3A

BY MR. POLLAK:

Q Mr. Salley, at the present time how do you make your living?

A Well, I draw retirement and I do interior decorating part-time.

Q The retirement, is that from the railroad?

A From the railroad and the Army.

Q Are you acquainted with Warren Robinson, who is one of the defendants in this case?

A Yes, sir.

Q Did you ever previously meet the witness that was here a few days ago, Thomas Tennessee Dawson?

A Yes, sir.

Q I ask you, Mr. Salley, aside from Mr. Robinson and Mr. Dawson, had you before this case started ever met any of the defendants or any of the witnesses that have testified in this case?

A No, sir.

Q You mentioned that you did interior decorating.

Did you ever do any work in a clothing store owned by Warren Robinson?

A Yes, sir.

Q Was that once or on a number of occasions?

A A number of occasions.

Q As a result of that you became friendly with Mr. Robinson, did you not?

A Yes, sir.

Q Did you ever have occasion to drive to New York with Warren Robinson?

A Yes, sir.

Q Was that on one or more occasions?

A On two occasions.

Q What was the purpose of those trips?

A Coming up to buy clothes.

Q For Mr. Robinson's store?

A Yes, sir.

Q And you accompanied him?

A Yes, sir.

Q When was the first of those occasions?

A I think it was around about in May.

Q Can you tell us what year, Mr. Salley?

A '72.

Q Do you have some way to fix the time?

A Yes, sir.

Q How do you fix that time?

A Well, it was softball season and I help to sponsor a softball team.

Q And that is how you fix the time as being May

of 1972?

A Yes, sir.

Q Whose car did you use on that occasion?

A Came up in Mr. Robinson's car.

Q Incidentally, I assume you drove from Washington, D.C.?

A Yes, sir. He drove.

Q On the way from Washington to New York did you make any stops?

A Yes, sir.

Q One or more, if you recall?

A One.

Q What was the purpose of that stop?

A To get gas.

Q At that time did you meet anyone?

A No, sir.

Q You just refueled the car and continued on your trip?

A Yes,sir.

Q Can you tell us when the second occasion was that you went to New York with Mr. Robinson?

A It was right before Christmas.

Q What year, sir?

A '72.

Q How do you fix the time of that?

A It was in December, he come up to get some clothes for his store for Christmas. That's the busy time of the year, Christmas, selling clothes.

Q So that the purpose of this trip was also to buy clothes, is that right?

A Yes, sir.

Q Whose car did you use on that occasion?

A His car.

Q Who drove?

A Mr. Robinson.

Q If you recall, did you make any stops on that trip?

A Yes, sir, to gas up.

Q When you gassed up, did you meet anyone?

A No, sir.

Q So after gassing up you continued on your trip to New York?

A Yes, sir.

Q Is that right?

A Yes, sir.

Q By the way, on the way back did you make any stops?

A Just to gas up.

Q Again, did you meet anyone?

A No, sir.

Q How about on your earlier trip, in May, '72, on your way back did you stop anywhere?

A Just to gas up.

Q Did you meet anyone?

A No, sir.

Q Mr. Salley, you have been sitting here throug' out the trial. Did you hear the testimony of two witnessses here, Harry Pannirello and Pasquale Jimmy Provitera?

A Yes, sir.

Q Prior to the time that Harry Pannirello testified here in court had you ever met him?

A No, sir.

Q Prior to the time that Pasquale Provitera testified here in court had you ever met or seen him?

A No, sir.

Q Did you ever meet them or either of them at the Howard Johnson's on Route 46 in New Jersey?

A No, sir.

Q As a matter of fact, do you recall whether you ever in your whole life stopped off at the Howard Johnson's on Route 46?

A No, sir.

Q Mr. Salley, have you ever dealt in narcotics?

A No, sir.

Q Have you ever accepted delivery of a package of narcotics?

A No, sir.

Q Have you ever been convicted of a crime, Mr. Salley?

A No, sir.

MR. POLLAK: I have nothing further.

MR. DOWD: Your Honor, may I talk to Mr. Pollak?

THE COURT: Yes. Hold on, Mr. Phillips.

MR. POLLAK: One further question, your Honor.

BY MR. POLLAK:

Q Incidentally, Mr. Salley, you testified before that you were married?

A Yes, sir.

Q Is your wife employed?

A Yes, sir.

Q Who does she work for?

A Metropolitan Police.

Q That is in Washington, D.C.?

A Yes, sir.

MR. POLLAK: Thank you.

MR. PHILLIPS: May I proceed, your Honor?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. PHILLIPS:

Q Mr. Salley, where in Washington, D.C. do you live?

A 1825 Burt. I don't know how to spell it.

Q You don't know how to spell Burt?

A No.

Q Did you ever live on 15th Street in Washington?

A That's my mailing address. That's my father's home, where he lived. All my mail come to that address.

Q That is --

A 260 15th Street Southeast, Washington, D.C.

Q You still use that address as a mailing address?

A Yes, sir.

Q Did you ever live there?

A No, sir.

Q You never lived there?

A No, sir.

Q Do you recall going to the offices of the Drug Enforcement Administration in October, after this indictment was filed?

A Yes, sir. I voluntarily went down there.

Q And you gave them the address of 260 15th Street Southeast, didn't you?

A Yes, sir. I gave them a driving permit. That's where they got it from, the driving permit.

Q The what?

A They got it off my driving permit.

Q But you gave them that as your address, is that right?

A Yes, sir.

Q By the way, do you have any nickname?

A No, sir.

Q Do you go by the name of Salley?

A Salley, my regular name, last name, Salley.

Q People call you Salley?

A Some people call me Salley and some call me Henry.

Q But there are people that call you Salley?

A Repeat that again.

Q There are people that call you Salley?

A Yes.

Q As a matter of fact, they asked you, didn't they, at the Drug Enforcement Administration when you turned yourself in if you had an alias?

A Yes.

Q And you told them it was Salley, didn't you?

A I told them my last name, Salley.

Q Didn't they ask you if you had an alias?

A I don't have an alias. That's my last name.

Q Did they ask you if you had an alias?

A I gave them my last name, that's all.

Q Did they ask you if you had an alias?

A They asked me, but I gave them my last name.

MR. PHILLIPS: May this be marked as an exhibit.

(Government's Exhibit 104 marked for identification.)

Q I show you what has been marked Government's Exhibit 104, Mr. Salley. Is that the fingerprint card that was made out on October 4, 1973?

A Yes, sir.

Q And your signature appears on that card?

A Yes, sir.

Q In the upper lefthand column or corner?

A Yes, sir.

Q Does the address appear underneath that that you gave them? Withdrawn.

Mr. Salley, does that refresh your recollection as to whether or not the agents asked you if you had an alias?

A I don't see no address up in here.

Q I withdrew the question. Does that refresh

your recollection as to whether or not the agents asked you if you had an alias?

A Yes. My last name, Salley, that's what I gave them. That's what the guy spelled the same way.

Q When they asked you if you had an alias you gave them Salley, is that correct?

A That's what everybody call me

Q Mr. Salley, you testified on direct examination that you had never been convicted before and you never had anything to do with narcotics. Do you remember saying that?

A Yes, sir.

Q That is not altogether true, is it?

MR. POLLAK: I am going to object to that.

A It is true.

MR. POLLAK: It is argumentative.

THE COURT: I would like an offer of proof on it. Come on up.

(At the side bar.)

THE COURT: I gather that you are going to represent he was convicted before.

MR. PHILLIPS: He has been twice convicted, your Honor, in August of 1973 of obtaining a Schedule II controlled drug, Preludin, and in 1960 of contempt.

I have a certified copy of the Preludin conviction and this is the FBI rap sheet.

THE COURT: Do you know what the contempt is about?

MR. PHILLIPS: No, I do not.

MR. LEIGHTON: It could be for not showing up for a parking ticket.

MR. ROSENBERG: Your Honor, is that a misdemeanor? If it is, I recall I was precluded from asking one of their witnesses with respect to misdemeanor convictions.

MR. PHILLIPS: Your Honor, the law in the Second Circuit and other circuits is clear. I am referring to U.S. v. Colletti, U.S. v. Carpenter. Where a defendant or, for that matter, any witness takes the stand and denies on direct examination any prior criminal record the government or the other party is entitled to cross-examine him.

THE COURT: This goes much further. The contempt I might guess is a misdemeanor. Since we don't know we are going to have to guess it is a misdemeanor.

However, this one is different, since he testified that he had no criminal record and that he never had anything to do with narcotics. This is a case where he did.

The certified copy of the conviction indicates that the Henry Salley who was convicted lived at 260 15th Street SE, Washington, D.C.

MR. ROSENBERG: Was there a sentence imposed in that, your Honor?

THE COURT: Yes.

MR. ROSENBERG: What was it?

THE COURT: Apparently there was a guilty plea, from what I can figure out here, and there was a $100 fine and 90 days in jail.

MR. POLLAK: That would seem to indicate it is definitely a misdemeanor, Judge.

THE COURT: I have no idea.

MR. LEIGHTON: Judge, may I make a statement?

MR. PHILLIPS: It doesn't make any difference.

THE COURT: No, it doesn't make any difference as to this.

MR. EPSTEIN: Is there a notice of an appearance by an attorney in that case?

THE COURT: I have absolutely no idea. I have a difficult time reading the thing.

MR. POLLAK: Your Honor, as your Honor knows, I am assigned and this comes as a complete surprise to me. May I have a moment to confer with him?

MR. PHILLIPS: I don't think counsel is entitled to confer with him now, your Honor. He is one the witness stand under cross examination.

THE COURT: I don't think you ought to confer with him now.

I will tell you this much: If you are going to go into redirect I want you to confer with him for some period of time before you do.

MR. POLLAK: Yes.

MR. ROSENBERG: Judge, what is the probative value?

MR. LEIGHTON: Judge, are you going to let him speak to the witness now?

THE COURT: No.

MR. LEIGHTON: I would object to Mr. Phillips using this unless there is a proper foundation to show that this is the right Henry Salley. It might be a different Henry Salley.

THE COURT: That is what I looked for. The address is the same.

MR. LEIGHTON: Somebody could have used his name.

THE COURT: It comes off the fingerprint card.

MR. EPSTEIN: Your Honor, you are not going to allow him to introduce testimony as to the contempt conviction in 1960?

THE COURT: That's right, because I don't know what it is.

MR. EPSTEIN: So the only conviction would be this one, an apparent misdemeanor conviction in Virginia.

THE COURT: I don't know if it is a misdemeanor or not. I can't tell from that. But it does involve a controlled drug and he has denied being involved in any way with a controlled drug.

MR. EPSTEIN: My only point is this: If it is a Virginia conviction is there anything to show

that what Virginia considers to be a controlled substance is considered a controlled substance by any other jurisdiction, including federal?

Secondly, is there any showing that Mr. Salley had an attorney, either assigned or retained, at the time he took this plea? Unless there is such a showing that he was in fact represented by counsel he can't be impeached based upon this conviction in Virginia.

MR. PHILLIPS: I submit the government should be entitled, based on his broad denial of ever of ever being convicted of any crime, should be entitled to at least ask him -- maybe not introduce independent evidence -- at least ask him about the contempt conviction.

THE COURT: No way.

MR. LEIGHTON: Judge, I would further object, if I may. This says an offense. It doesn't say a misdemeanor or a felony.

Under our old penal law an offense was not a crime. I would say that since this does not say misdemeanor or felony that it cannot be asked. There may not be a conviction of a crime.

THE COURT: But that way you ignore the entire testimony that he has never been involved with

any drugs.

MR. LEIGHTON: He said he has never been convicted of a crime.

MR. ENGEL: No, that he had never been convicted of narcotics.

MR. LEIGHTON: How do we know that Preludin is a narcotic.

THE COURT: I submit to you gentlemen that the certified copy of the thing says a controlled substance, a Schedule II controlled drug.

MR. LEIGHTON: That is not this district. They may have aspirins as a controlled drug, Judge.

MR. EPSTEIN: That is under Virginia law, your Honor.

MR. POLLAK: This is not a federal conviction.

MR. LEIGHTON: I think we need an offer of proof out of the presence of the jury or a voir dire by the government to show that this, No. 1, is a crime and would be a crime in this district, because if this comes in now I think the prejudice will completely outweigh any probative value, if we find that in fact Preludin would not be a drug in this district.

MR. PHILLIPS: This goes to his credibility,

your Honor.

THE COURT: Absolutely.

MR. LEIGHTON: He said no narcotics. No one asked him about this. We don't know if this is a narcotic drug. Aspirins are drugs.

THE COURT: No, they are not Schedule II controlled drugs.

MR. LEIGHTON: It doesn't say Schedule II.

THE COURT: Yes, it does.

MR. ENGEL: Yes, it does. It says Schedule II.

(In open court.)

MR. POLLAK: Your Honor, one further point. May we approach one moment again?

THE COURT: All right. Come up.

(At the side bar.)

MR. POLLAK: Your Honor, I had indicated on the record previously that this comes as a complete surprise, but I had neglected before to state that in the event the court rules that this line of questioning can be asked I would move for a mistrial for the record.

THE COURT: Yes. All right. That is denied.

(In open court.)

BY MR. PHILLIPS:

Q Mr. Salley, isn't it a fact that in Richmond, Virginia last August, August, 1973, you were convicted of selling a controlled II substance called Prelud'n?

MR. FISHER: Objection, if your Honor please. There are no such things as controlled II substances.

MR. PHILLIPS: Schedule II substance.

MR. FISHER: Or Schedule II substances.

THE COURT: No, I will permit it.

A No, sir. I was charged with a misdemeanor. It was somebody else.

Q It was somebody else?

A Yes.

Q You were not convicted?

A No.

Q You weren't convicted?

A No.

MR. PHILLIPS: May this be marked as 105, Government's Exhibit 105.

(Government's Exhibit 105 was marked for identification.)

xx Q I show you what has been marked Government's Exhibit 105 for identification, Mr. Salley.

Where I am pointing, right there, is that your signature?

A Yes, sir.

Q Is it your testimony that you were arrested in Richmond, Virginia?

A Yes, for a misdemeanor.

Q What were you charged with?

A Misdemeanor.

Q What was the charge?

A It was a misdemeanor charge.

Q What specifically? Would you tell the jury what specifically you were charged with?

A I had took a fellow down there to a drug-store and they caught him and they charged me with a misdemeanor for bringing him down there.

Q Were you charged with selling or obtaining a Schedule II controlled substance, Preludin?

A No, sir.

MR. ROSENBERG: Objection, your Honor.

MR. POLLAK: I will object. We don't know what Schedule II.

MR. ROSENBERG: It doesn't count. It is the ultimate disposition.

Q Were you charged with obtaining Preludin?

MR. ROSENBERG: Objection.

MR. POLLAK: I will object to what he was charged with, your Honor.

THE COURT: I will sustain the objection.

Q Were you convicted of obtaining Preludin?

A No, sir.

Q You were not, you are sure about that?

A I am definite.

MR. PHILLIPS: Your Honor. at this point the government offers Government's Exhibit 105 for identification.

MR. POLLAK: I will object to it, your Honor.

THE COURT: All right. I think the other counsel ought to have a chance to look at it.

(Pause.)

THE COURT: Ladies and gentlemen, I think it is going to take counsel a couple of minutes to go through this document. I noticed before when exhibits had been handed up to you it takes a few minutes. I am glad it does, because it shows that you are really paying attention. But now it is their turn and we are going to pull a sneaky on them. It is time for your morning break.

(The jury left the courtroom.)

THE COURT: Mr. Phillips, do you have much more to go?

MR. PHILLIPS: Not too much, your Honor.

THE COURT: About how long?

MR. PHILLIPS: 10, 15 minutes.

THE COURT: All right. The reason I am thinking about this is I want to give Mr. Pollak as much time as possible before he makes a decision as to whether he wants to go into redirect. What I am trying to work out right now in my own mind is to end the cross so that we can take the lunch break and he will have that period of time to talk about this case, consider what you want to do, if anything, on redirect.

I will be back here in seven minutes, I will give you five minutes to argue about the admissi-

bility of what looks like a certified copy of a conviction and I will rule, we will have the jury back in and hopefully we will just end cross at the time for the lunch break.

(Recess.)

(In the robing room.)

MRS. ROSNER: Your Honor, I have an application with respect to a witness whom I wish to call on Inglese's defense case. I am informed that he has one felony conviction, that is the witness, which was in 1943 in New York State and I think he was sentenced to a year incarceration, but it was a felony conviction.

I would move, your Honor, for a ruling prohibiting the government from inquiring about that conviction under a case in this circuit, United States vs. Nathan Boulieri, and in that case I believe the court commented that it was error to impeach a character witness with a conviction which would not have been usable had the witness been a defendant because of the rule in the Puco case barring impeachment with antique conviction. I believe Nathan held it was harmless error, but they did say it was error.

MR. CURRAN: Is that recent?

MRS. ROSNER: It is Second Circuit, 1973.

It would be some time this summer that it came down.

Are you familiar with that, Mr. Curran?

MR. CURRAN: No.

THE COURT: What kind of a felony are we talking about?

MRS. ROSNER: It was assault, I think, your Honor, assault and battery. I don't believe a weapon was involved. It was just a fist assault, I think. That is my information. But I think because of the age being --

THE COURT: When was it?

MRS. ROSNER: It was 1943, and he has had no felony convictions under that.

THE COURT: Are you calling this guy as a character witness?

MRS. ROSNER: No, I am not. I am calling him to testify as to substantive matters.

MR. PANZER: Your Honor, in an abundance of caution I am requesting from the government that they provide me with the fingerprint record of my client, Mrs. Hattie Ware.

Mr. Curran has advised me that that is not the policy of his office, but I think I would be entitled to it, your Honor.

MR.CURRAN: Your Honor, the government's posiiton is as stated by Mr. Panzer and I know of no rule or case that requires it it and it is our policy not to turn over so-called rap sheets to defendants or defense counsel or, indeed, to anyone.

MR. PANZER: I am not asking for anybody else's rap sheet, just for my client's.

THE COURT: I understand.

MR. PANZER: I think U. S. v. Puco, if there was a felony conviction, the judge would be entitled to see it and I would be entitled to be given notice whether you could use that for purposes of impeachment.

If I don't see the rap sheet I can only go on what information I have. I think in light of that case I would be entitled to it.

THE COURT: Unfortunately, I am constrained to agree with Mr. Curran. I know of no rule or statute or case which would give me the authority to order this particular thing be turned over at this particular point.

MR. PANZER: Very well, your Honor.

(In open court; jury not present.)

THE COURT: All right, Mr. Pollak.

MR. POLLAK: Well, your Honor, I would

object to this for a number of reasons, some of which were stated at the bench conference before.

First of all, we don't know Schedule II of what, we don't know what this product is and I notice that this is rather an inexact situation.

For example, I notice at least one word here is misspelled so we don't even know whether that is the right name for it, Preludin.

I submit under those circumstances, especially with the further circumstance that this is listed as an offense, that on a guilty plea he received a $100 fine, I submit that this is indicative of the fact that this might be merely a violation or offense which is not a crime at all.

I submit that the government has the burden of showing before they can introduce this document into evidence that the thing is a crime and would be a crime under either federal law or New York law before they can use this.

THE COURT: Anyone else?

MR. ELLIS: Your Honor, I would join in that objection.

The character of this event is a question of Virginia law. The reference to Schedule II under the

statute of Virginia may be pharmaceuticals or they may be what we consider narcotic drugs in this jurisdiction. That doesn't appear from the record.

I believe the question asked Salley was whether he was ever convicted of a narcotics offense or any crime.

THE COURT: It is my recollection it was any crime and then the other one was, "Were you ever involved with narcotics?"

MR. ELLIS: As to the second --

THE COURT: That is my recollection.

MR. ELLIS: I think that is correct, your Honor.

MR. POLLAK: Yes, that is my recollection.

MR. ELLIS: As to the second, whether he was involved in narcotics, this conviction does not establish that the crime involved narcotics rather than a pharmaceutical of some kind.

As to the first, whether it is a crime at all, the reference is to an offense and that is a matter of Virginia law. The foundation has not been established.

I further urge your Honor, if you do decide to permit this conviction to come in, that you do so under a limiting instruction to the jury of the strongest kind

to show them that it is not connected with the conspiracy charge here.

THE COURT: Oh, yes.

Mrs. Rosner.

MRS. ROSNER: Your Honor, may I suggest something?

I think the two questions involved which open the door to this kind of cross examination can be construed in the following manner:

I think Mr. Pollak is entitled to elicit the fact that his client has never been convicted of a felony without opening the door for the government to impeach with an otherwise inadmissible misdemeanor, and I think the question, "Have you ever been convicted of a crime?" which I believe was put on direct examination, would appropriately be narrowly construed to elicit the fact that he had never been convicted of a felony, which is a truthful response, it does not open the door as to impeachment.

With respect to the second question, "Have you ever been involved with narcotics?" absent a showing by the government that the substance Preludin is defined as a narcotic under Virginia law, I don't think a proper foundation has been laid, your Honor, to rebut Mr.

Salley's direct testimony that he has never been involved in narcotics, and I would suggest, your Honor, along those lines I believe I am correct in stating that narcotic is defined under our own federal law to include only addictive substances, a category which I don't believe Preludin is in.

I think absent a better showing by the government that Preludin is a narcotic under the meaning of Virginia law, this conviction would not be admissible to impeach Mr. Salley's testimony that he has not dealt in narcotics. It is simply not probative, your Honor.

MR. POLLAK: Your Honor, I have two further points that I would like to make by way of objection to this.

No. 1, this document does not indicate that Mr. Salley was represented by counsel at the time. That is a further ground why the conviction cannot be used. And, No. 2, is the technical ground that I don't believe this is an exemplified copy and I believe the rule requires, if you are going to introduce into evidence a foreign judgment, that it be an exemplified copy rather than a certified copy.

THE COURT: All right. I will hear from you, Mr. Phillips.

MR. PHILLIPS: Your Honor, the government is offering this document solely on the question of Mr. Salley's credibility to establish that when he said on direct examination that he had never been involved in narcotics and he had never bee. convicted of a crime he was not telling the truth. That is the sole purpose of offering this particular document.

We are not trying to connect Mr. Salley to this conspiracy through this document in any way whatsoever. That is the basis of the government's offer.

THE COURT: I understand.

MR. PHILLIPS: We submit under Colletti and Carpenter the door was opened on direct examination.

THE COURT: All right. Mr. Phillips, can you go ahead with your cross examination if I reserve on this thing?

MR. PHILLIPS: Did your Honor ask a question?

THE COURT: Yes.

MR. PHILLIPS: Yes, I can.

THE COURT: All right. Let me reserve on this thing. I will take a look at this over the lunchtime.

Let us bring back the jury and let us continue

the cross examination.

By the way, I had made a general ruling that I did not want counsel to talk to any of their witnesses while on cross. I am suspending that general rule completely in this situation.

MR. POLLAK: Thank you, your Honor.

I had adhered to the ruling during the recess.

THE COURT: All right.

MR. PHILLIPS: Your Honor, I would just like to add one final thing.

As far as the authenticity of the document, Mr. Salley has identified his own signature on it.

THE COURT: I am aware of it. I was here. I watched it.

All right, bring back the jury.

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(Jury present.)

BY MR. PHILLIPS:

Q Mr. Salley, how many trips did you make to New York with Mr. Robinson?

A Two.

Q You are sure about that?

A Definitely.

Q You are sure about that now as you were last October?

A I wasn't up here last October.

Q You weren't up here last October?

A No.

Q In October of 1973 you weren't here?

A That's the year my father died.

Q Weren't you in my office with Agent Nolan and Agent Moore last October?

A Oh, last October? Yeah.

Q That is what I am talking about, October, 1973.

A '73?

Q Yes.

A Yeah.

Q Do you remember talking to me that day?

A Yes, sir.

Q And do you remember Agent Nolan being present

and Agent Moore being present?

A Yes, sir.

Q And do you remember first I advised you of your constitutional rights?

A Yes, sir.

MR. FISHER: Your Honor, please, with regard to this conversation, may the rest of the defendants have a limiting instruction?

THE COURT: Up to this point I don't know exactly how limited because I don't know what is coming out next.

This has nothing to do with the rest of the defendants at all. This is a conversation between this defendant, I gather, and Agents -- who were there?

MR. PHILLIPS: Nolan, Moore and myself.

THE COURT: Nolan, Moore and Mr. Phillips.

Q Do you recall at that time, Mr. Salley, you told me that you had been to New York with Robinson on one occasion?

A No, two occasions.

Q What did you tell me?

A I don't remember, but I know it was two occasions.

MR. PHILLIPS: May this be marked as Government's Exhibit 106 for identification.

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(Government's Exhibit 106 marked for identification.)

Q Mr. Salley, I show you the second page of what has been marked as Government's Exhibit 106 for identification.

MR. POLLAK: I am going to object to that, your Honor. I don't believe that this is in the witness's handwriting.

THE COURT: Yes, I understand that. I believe the rest of the question is,"Does this refresh your recollection?"

You can refresh your recollection with the back of a cigarette box. It doesn't have to be in the witness's handwriting.

Q Mr. Salley, will you read the second page of that document and tell us whether or not that refreshes your recollection as to whether you said to me that you had been with Robinson to New York on one occasion rather than two occasions?

A No, it do not.

Q It doesn't refresh your recollection?

A No.

Q Did you stay overnight when you came with Robinson to New York?

tp4 Salley-cross

A Yeah, the first time I did.

Q Where did you stay?

A I really don't know the girl. So. girl ..e go with. We stayed up her house.

Q Where was it located?

A I don't know nothing about New York. Ir ally couldn't tell you.

Q Do you remember the girl's name?

A No.

Q Does she live in the Bronx?

A I wouldn't know the Bronx from Harlem.

Q In any event, you spent the night there, is that correct?

A Yeah.

Q How about the second time?

A No, we didn't -- we went back.

Q You went back the sameday? You came up and went back the same day?

A Yeah.

Q Those are the only two occasions you came to New York with Robinson, is that correct?

A Yes, sir.

Q And did anybody accompany you and Robinson?

A No, sir.

Q You are sure about that?

A Definitely.

Q And you never stopped in New Jersey when you came up with Robinson?

A No, but the Jersey Turnpike.

Q You stopped on the Jersey Turnpike to buy gas?

A Gas up.

Q But you didn't spend the night anywhere in New Jersey?

A No, sir.

Q During 1972 were those the only two occasions you came to New York?

A '72?

Q You mentioned that the two occasions that you are talking about, one was in May of '72 and one was in December of '72. Is that correct?

A Yes, sir.

Q Were those the only two occasions you came to New York?

A Yes, sir.

Q During 1972?

A Yes, sir.

Q Did you ever go to New Jersey during 1972 on any other occasion?

tp6 Salley-cross

A No, sir.

Q You are sure about that?

A Definite.

MR. PHILLIPS: May this be marked as Government's Exhibit 107 for identification.

xx (Government's Exhibit 107 marked for identification.)

Q I have showed you now two documents, Mr. Salley, which you have agreed contained your signature.

Does this document also have your signature on it?

A No, sir.

Q That is not your signature?

A No, sir.

Q You are sure about that?

A Definite.

Q But you use as a mailing address 260 15th Street, Southeast, is that correct?

A Yes.

MR. ROSENBERG: Objection. He is referring to something that is not in evidence, if your Honor pleases.

THE COURT: I don't know if he is referring to that. I think he is referring to the address that Mr. Salley testified to at the beginning of this cross-

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examination.

MR. ROSENBERG: I misunderstood. I thought he was referring to something else.

THE COURT: He better not.

Q But you do use as a mailing address 260 15th Street, Southeast, Washington, D.C., is that correct?

A Yes,sir.

Q And this is your signature on Government's Exhibit 104 for identification in the upper lefthand column?

A Yes, sir.

Q No question about that?

A No question.

Q And there is no question in your mind that on Government's Exhibit 105 for identification, your signature appears where I am pointing right there?

A Yes, sir.

Q And if you look at the back side of Government's Exhibit 104 for identification, does that refresh your recollection as to the address that you gave to the agents in Washington at the Drug Enforcement Administration?

A Yes, sir.

Q What was the address you gave them?

A 260.

Q 15th Street, Southeast?

A 15th Street, Southeast.

Q Washington, D.C.?

A Washington, right.

Q You say that you don't know Jimmy Provitera?

A No, sir.

Q You never saw him before he came into this courtroom?

A No, sir.

Q That was the first time you ever saw him?

A Yes, sir.

Q And Harry Pannirello, you never met him?

A Never met him.

Q The first time you ever saw him was when he came into the courtroom?

A Yes, sir.

Q You say you do interior decorating work?

A Yes, sir.

Q Do you do that for Robinson? You work for Robinson?

A Robinson, anybody who want me to do some work for.

Q How about Tennessee Dawson?

A Never did any work for him.

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Q You know him, though?

A Yes.

Q How long do you know him?

A Let me see. When I was doing some work in Robinson's store he come in there to buy clothes.

Q You weren't introduced to Robinson by Dawson?

A Well, my being in the store, talking to the fellows, conversation was going on.

Q That's how you met Dawson?

A Yes.

Q You met Robinson first?

A Yeah.

Q Then Dawson?

A Yes.

Q How about a fellow named Bubbles, ever meet him?

A No.

Q Never met him? Never met anybody by the name of Bubbles in Washington?

A No.

Q How about a fellow named Georgie?

A No.

Q Never met him?

A No.

Q Ever hear Robinson speak about Georgie?

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A No.

Q Did you ever hear Tennessee speak about Georgie?

A No.

Q How about Paulie the Arrow, ever hear him speak about him?

A No.

(Pause.)

THE COURT: Mr. Phillips, do you think this might be a good time for a lunch break?

MR. PHILLIPS: I am just about through, just one minute. I just have one more question, as a matter of fact.

THE COURT: All right.

MR. PHILLIPS: May this blank piece of paper be marked as Government's Exhibit 108 for identification.

xx (Government's Exhibit 108 marked for identification.)

Q Mr. Salley, would you write on this piece of paper your signature --

MR. POLLAK: I am going to object to that, your Honor, especially in front of the jury.

MR. PHILLIPS: I think it is perfectly proper.

THE COURT: All right. We are going to take our lunch break, anyway, even if there is one more question. All right, ladies and gentlemen.

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(The jury left the courtroom.)

THE COURT: All right. Do you want handwriting exemplars?

MR. PHILLIPS: Yes, I do. I want the witness to write his name, 260 15th Street, Southeast, Washington, D.C., 10 times.

THE WITNESS: I'll write it once. 10 times? Once is enough.

THE COURT: I am sorry, did you say something?

THE WITNESS: I was talking to Mr. Phillips.

THE COURT: All right, ladies and gentlemen, I guess you can go to lunch.

Mr. Pollak and Mr. Phillips, come up.

(At the bench.)

THE COURT: Mr. Pollak, I assume you know there is a whole body of case law whichpermits the taking of exemplars.

MR. POLLAK: Yes, I know. We have had it before in this trial and I am familiar with it.

However, I think this is a case which is a little bit different because they have exemplars, so there is really no need.

He has identified two pieces of paper which contain his signature, so they have samples of his signature.

THE COURT: Okay. The problem is that in order to make a handwriting identification they are going to need more than just two more signatures. Under the circumstances, they are entitled to get exemplars.

Do you want me to get the defendant up here and direct him or do you want to tell him?

MR. POLLAK: I will tell him. If that is your ruling, your Honor, I will tell him he has to do it.

THE COURT: Yes. All right.

(Luncheon recess.)

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AFTERNOON SESSION

2.00 P.M.

(In opencourt; jury not present.)

THE COURT: This morning an exhibit was offered by the government which is a certified copy of a conviction from Alexandria, Virginia. I don't know the number.

What is the number on that, Mr. Phillips?

MR. PHILLIPS: The exhibit number, your honor?

THE COURT: Yes.

MR. PHILLIPS: 105 for identification.

THE COURT: The exhibit reveals a conviction for possession of a Schedule II controlled drug, namely, Preludin. There was a question as to its admissibility.

I have checked the pharmacopeia and discovered that Preludin is a Schedule II controlled drug under the federal laws and also under the state laws. Basically, Preludin is a synthetic, I understand, amphetamine, and its effects are those exactly of an amphetamine.

Does anybody's research disclose anything different?

MR. ELLIS: Your Honor, I didn't do any research, but I would suggest that the test isn't what the drug objectively is, but what the defendant believed that it was when he gave that answer, whether he knew the nature of the

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substance.

THE COURT: We have to go a little bit father on that. It's my understanding of the statute in Virginia that, similar to the federal law the term of imprisonment for violation of narcotics laws is left much to the discretion of the judge, under the present laws. Having been on all three sides of the fence, I consider the discretionary features of the present laws to be a verygood thing, not only for the particular defendants, but for society in general.

However, it appears to me from my researchthat the crime charged in the conviction constitutes a felony, a felony under federal law, a felony under the laws of the Commonwealth of Virginia, and a felony under New York State law.

Has anyone's research found out anything different?

MR. DOWD: Your Honor, did you say a felony?

THE COURT: I said a felony?

MR. DOWD: Under New York State law?

THE COURT: I am talking about under the Commonwealth of Virginia it's a felony.

MR. DOWD: I am sorry. I was perhaps not paying one hundred per cent attention. I thought you said

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New York State law.

THE COURT: I believe that under New York State law it used to be -- of course, I am always open -- where you can go away for a number of years. Under the new system, with the A, B, C,D misdemeanors,has that been changed?

MR. DOWD: I am sorry. I wasn't paying attention. I thought you were just talking about the drug itself and whether the amount of the drug would constitute a felony in New York State. It wouldn't.

THE COURT: I have no idea what the amount of the drug was. I can't say one way or the other.

MR. DOWD: Your Honor, I might point out, unless your Honor has researched the Virginia statute, New Jersey has a disorderly persons statute which carries with it very heavy penalties, but refrains from determining something or defining something as being a crime and classifying it as an offense for the purpose of prohibiting or preventing people from having the stigma of a conviction. I don't know, I have no idea about Virginia.

THE COURT: Unfortunately, the amount of time given to me to try to eat lunch, and in fact forcing the two young ladies whom you have gotten to know as my law

clerks skip lunch or have to eat it in, I don't know the answer to it, but it seems that it is a felony. I assure I do not hold myself out as an expert in the law of Virginia.

MR. SIEGEL: Your Honor, if I can make an inquiry at this time, has the Court in its research determined what the maximum penalty is for the possession of the drug?

I believe that on the certified judgment it says that the individual pleaded guilty to a possession of the drug. Now, pure possession incertain instances in the State of New York is a misdemeanor.

THE COURT: I am aware of that.

MR. SIEGEL: If in fact the individual pleaded guilty to a misdemeanor it would be considered as a misdemeanor, not a felony, your Honor.

THE COURT: The problem is, even if it was a misdemeanor, we are in a situation where we have other questions which open the door.

Under the circumstances, I will receive in evidence Government's Exhibit 105 for identification.

xx (Government's Exhibit 105 received in evidence.)

THE COURT: Yes. Mr. Sunden.

MR. SUNDEN: Judge, I feel compelled to tell the Court that through total inadvertence I saw the jury at lunchtime when I went to lunch. It turns out they were dining at the same place and I saw them as I exited. There was certainly no conversation or anything.

THE COURT: Don't worry about it. These things happen. There aren't sufficient decent restaurants in this area that we can all go to different places.

Most of the time, Mr. Sunden, I meethalf of the defense attorneys and some of the defendants when I go to Antica Roma or when I go to Stark's.

Mr. Warner.

MR. WARNER: Your Honor, has the document been admitted into evidence because the door was opened by the question or because it's a felony?

THE COURT: Because I believe that it should be received in evidence.

Mr. Phillips, do you have any further questions?

MR. PHILLIPS: Your Honor, I don't, providing --

THE COURT: I assume that you got your handwriting exemplars.

MR. PHILLIPS: Yes. For that reason I would like to offer Government's Exhibit 104 for identification, 107 for identification and 108 for identification, providing

that as to Government's Exhibit 108 for identification counsel for Mr. Salley would be willing to stipulate that the 10 signatures of Henry Salley and the address in Washington, D.C. were written by Mr. Salley prior to the lunch hour.

THE COURT: You are going to offer these?

MR. PHILLIPS: Yes, your Honor.

MR. POLLAK: I will object on the ground of relevance, your Honor.

THE COURT: Yes, I understand that. But are you willing to agree that whatever this blank piece of paper with the writing on it is was written by Henry Salley?

MR. POLLAK: Yes. I don't know the number, but I will stipulate. Is it 108, Mr. Phillips?

MR. PHILLIPS: Actually, your Honor, the government can reserve this offer until its rebuttal testimony tomorrow.

I have no further questions, providing the signatures on Government's Exhibit 108 for identification we can stipulate to, Mr. Pollak and myself. Otherwise I would want to ask Mr. Salley if he did write this.

MR. POLLAK: I will stipulate that Mr. Salley wrote the signatures on Exhibit 108 for identification.

THE COURT: All right, fine.

You object to its receipt in evidence?

MR. POLLAK: Yes.

THE COURT: It is not being received.

MR. POLLAK: Yes.

THE COURT: My next question is do you want to have redirect.

MR. POLLAK: Yes. Might I have a few moments? Your Honor indicated that he would give me a couple of minutes.

THE COURT: Yes.

MR. POLLAK: I don't think I will need

more than about five minutes or ten minutes at the most.

THE COURT: All right.

MR. FISHER: Your Honor, would your Honor consider hearing argument and ruling on my offer while Mr. Pollak is conferring with his client?

THE COURT: Yes. I asked you if you would be good enough to mark out the sections. Did you?

MR. FISHER: Yes, your Honor.

THE COURT: Do you have the parts of the transcript?

MR. FISHER: We have narrowed the issues.

THE COURT: All right, go ahead.

MR. FISHER: If your Honor please, to let the record indicate specifically what I am offering here, I am offering from C425 of the transcript of the May 24th conversation on page 18 the following:

"Frank, some weeks from now or a couple of months from now maybe the lieutenant will have to tell Rogers what you did and they'll evaluate that. And if you have done a terrific fucking job -- it may not take long if you know the right people and do the right things -- some day Rogers is going to wipe

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your slate clean."

If your Honor please, the witness was asked by me if he made that statement. He was then confronted with --

THE COURT: If he made that statement or someone --

MR. FISHER: If he was present when the statement was made to him. He was then confronted with the relevant portion of the transcript and after that confrontation claimed he had no recollection.

I submit it is conceivable, if your Honor please, as proof relating to motive, which, as the court I am sure knows, can be extrinsically proven anyway.

THE COURT: What is the next one?

MR. FISHER: The next comes from the transcript indicated as 476, July 11th, page 78:

"So now" -- again, Stasi is being told by one of his interrogators -- "So now you're going to rise or fall by how you're going to perform for Rogers there."

Again, if your Honor please, it is offered as extrinsic proof of a motive to testify in this case, a motive certainly consistent with our claim of Stasi's fabrication.

jha4

The record should reflect with regard to the first offer his denial of being able to recall that statement being made to him is reflected on pages 579 through 580 of the trial record.

With regard to the second, if your Honor please, he has not been questioned about that, so there is no reference in the trial record; at least in my cross examination. I don't recall, frankly, if anyone else asked him,.

The third offer is found on page 226 and 27 of the tape indicated on transcript No. 515, July 10th. On or about page 587 of the trial record Stasi was asked about that now famous statement about a plane ticket, a pot of gold. I am sure your Honor will recall it.

Stasi maintained consistently that while he had some recollection of the plane ticket, the pot of gold strangely is something he couldn't recall. He maintained that at least twice. I submit, your Honor, a pot of gold is indeed very, very eloquent proof of a motive to fabricate.

Finally, if your Honor please, on page 103 of the same transcript indicated by 515 -- I am sorry. I withdraw that. That is already in the record.

THE COURT: What is already in the record?

MR. FISHER: What I was just about to offer.

THE COURT: All right.

MR. FISHER: So I withdraw it.

MR. PHILLIPS: Your Honor, it is the government's position that this record is replete with instances from which counsel can argue that Mr. Stasi was motivated for whatever reasons, by virtue of his conversations with the detectives under Lieutenant Whalen and Sergeant O'Boyle, to fabricate testimony in this case in favor of the government. We submit that this other evidence should not be further admitted.

In any event, Stasi's testimony on cross examination, as Mr. Fisher pointed out, was that he did not recall these statements being made. So if he did not recall the statements being made then I submit that it is not admissible to show that he was motivated by the statements to give false testimony in this case. I submit that the only statements that would be admissible are those that he can recall being made to him so that he could act on them.

MR. FISHER: If your Honor please, I would like to be able to argue to the jury that Stasi's statement that he did not recall being told if he cooper-

ates he is going to get a free pass and a pot of gold is --

THE COURT: A plane ticket.

MR. FISHER: -- a plane ticket and a pot of gold is at best more confusion on his part, deliberate confusion, I think perjury, most respectfully, your Honor. I think I have a right to prove it.

The other aspect of Mr. Phillips' argument is one which I would like to see him consistently apply to his case. Having tried to prove something once in one way he would suggest that is it. One transaction on Mr. Christiano then I guess would have been enough. I don't think that's even fair argument.

THE COURT: I will think about it.

MR. WARNER: Your Honor, while we are waiting may I see the document that the government showed to Mr. Salley where he failed to identify a signature as his own?

THE COURT: I don't care. That is something between you and the government.

MR. PHILLIPS: We have no objection, your Honor.

MRS. ROSNER: After Mr. Pollak concludes his proof, I expect to produce the witness that we had the discussion about in the robing room.

THE COURT: You referred me to the case of United States vs. Nathan, which is to be found at 476 F. 2d 456.

You suggested that in this situation given by United States vs. Nathan that a witness could not be asked about a prior felony conviction. I understood you this morning to say that the ruling there was that the witness should not be asked about his own prior felony convictions.

MRS. ROSNER: Yes, sir, where that conviction would be barred by the rule against United States vs. Puco because of its age.

THE COURT: I am going to be the librarian and lend you the book.

If you will be good enough to show me where that case stands for that I will be glad to take it.

By the way, after Mr. Salley's testimony is finished we will break and you can show me that. All right?

MRS. ROSNER: Yes.

THE COURT: Are you ready to go ahead, Mr. Pollak?

MR. POLLAK: Yes, sir.

THE COURT: All right.

Mr. Pollak, will there be redirect?

MR. POLLAK: Yes, sir.

THE COURT: All right, let us bring back the jury.

MR. PANZER: Your Honor, might I say this. If you have not reached a decision with respect to Mrs. Rosner's witness, I am prepared to go forward to give your Honor some more time if your Honor wants to consider it and have her witness go on last.

THE COURT: All right.

MR. SUNDEN: Before Mr. Panzer presents his direct case I would like to be heard out of the presence of the jury in an application to your Honor.

THE COURT: In connection with Mr. Panzer's direct case?

MR. SUNDEN: Yes.

THE COURT: All right.

MR. SUNDEN: In fact, I would actually like to be heard not at the side bar with the jury present but without the jury in the room. Perhaps this would be an appropriate time.

THE COURT: We will take a break after this

and we will take care of it.

MR. PHILLIPS: Mr. Pollak, I am going to announce a stipulation before you go ahead, all right?

MR. POLLAK: About these signatures?

MR. PHILLIPS: Yes.

MR. POLLAK: Wait a minute. That is not in evidence.

MR. PHILLIPS: You said you were willing to stipulate.

MR. POLLAK: I am willing to stipulate the signatures. I am not stipulating to put it in evidence.

MR. PHILLIPS: I haven't offered this yet.

MR. POLLAK: I know. I understand.

MR. PHILLIPS: The stipulation is that this document is the defendant Henry Salley's handwriting.

MR. POLLAK: I am not going to stipulate it in front of the jury because it is not in evidence. I thought I did stipulate that it is in Salley's handwriting.

MR. PHILLIPS: What do you want to stipulate to?

MR. POLLAK: That it is in Salley's handwriting.

MR. PHILLIPS: Yes.

MR. POLLAK: If the document itself is not in evidence --

MR. CURRAN: We will offer it subject to the stipulation.

MR. PHILLIPS: You are going to put him on the witness stand. I am simply going to say, "Did you write the writing that appears on this document?"

MR. POLLAK: Yes, I will stipulate to that in front of the jury.

(Jury present.)

THE COURT: All right, Mr. Salley.

H E N R Y S A L L E Y resumed.

MR. PHILLIPS: Your Honor, it has been agreed and stipulated between Mr. Pollak, counsel for Mr. Salley, and the government that the handwriting that appears on Government's Exhibit 108 for identification is the handwriting writtne by the defendant Henry Salley just subsequent to the break today, during the luncheon break today.

THE COURT: All right.

MR. POLLAK: That is correct.

THE COURT: All right, Mr. Pollak.

MR. PHILLIPS: I have no further ques-

tions.

REDIRECT EXAMINATION

BY MR. POLLAK:

Q Mr. Salley, you were asked before about a guilty plea in Virginia in connection with a drug called Preludin.

Do you recall that conviction?

A Yes, sir.

Q And what is Preludin?

A Preludin, that is the name -- I used to go to the doctor to get that pill to lose weight. They called it Preludin in Washington.

Q It is sort of a diet pill?

A It's a diet pill to lose weight.

Q Sir, do you recall when you testified before this morning I asked you about whether you had ever been involved in narcotics and your answer was no.

Do you want to explain that since you now recall that you did possess Preludin at one time?

Do you consider Preludin a narcotic?

A No, I do not because it's a prescription give to you by the doctor, the pharmacist give it to you to lose weight. It's a weight pill.

Q What do you consider to be narcotics?

A Like heroin, cocaine, stuff like that.

Q What was your penalty on that guilty plea to possession of that diet pill Preludin?

A Misdemeanor charge, a hundred dollar fine, because I was out of state and I had a doctor bring it back to another state.

When I asked you before whether you had ever been convicted of a crime you answered no. Is that right?

A Yes, sir.

Q And if I were to ask you the same question, how would you answer it now?

A It would be no.

Q It would still be no?

A Yes, sir.

Q Despite the fact that you pleaded guilty to possession of this Preludin?

A Yes, sir.

Q By the way, you and I discussed this case during the luncheon recess, did we not?

A Yes, sir.

Q Incidentally, Mr. Phillips asked you to spell the name of an avenue and you had some difficulty with that.

How much education have you had?

A I went to eighth grade. I dropped out of school. I come from a poor family. I went to work when I was really young.

Q And did you take any English courses or anything like that since you dropped out of the eighth grade?

A No, sir. All I worked and then I volunteered, I went -- I put my age up and went in the Army when I was 17.

Q And how is your spelling?

A Pretty rough.

Q Just one final point, Mr. Salley.

During the luncheon recess I believe you told me that you had occasion to make a phone call to Washington, is that right?

A Yes, sir. I talked to my sister.

Q And as a result of that conversation did you refresh your memory as to any trips you might have taken to New York or New Jersey from Washington?

A Yes, sir.

Q In addition to the two trips in May, 1972 and December, 1972 that you took with Warren Robinson from Washington to New York, do you now recall whether there were any other trips that you took?

A Yes, sir.

A Yes, sir.

Q In 1972?

A Yes, sir.

Q And what do you now recall about whether you took any such other trips?

A Well, actually it was a shock. My father died October the 25th and my sister told me --

Q That was in 1972, right?

A '72. And I was -- my father was close and me and this girl took a ride and we did stay at a Howard Johnson overnight.

Q Do you know which one it was?

A I don't know which one it was, but I know I stayed in one.

Q Was Warren Robinson along with you on that trip?

A No, he wasn't along with me.

Q Did you meet Harry Pannirello on that trip?

A No, sir.

Q Did you meet Pasquale Provitera on that trip?

A No, sir.

MR. POLLAK: I have nothing further.

RECROSS EXAMINATION

BY MR. PHILLIPS:

Q Mr. Salley, did you plead guilty or were you found guilty in Richmond, Virginia?

A Well, they caught this buy and I went to see about him, he was riding with me, and they say they were going to charge me with misdemeanor and I plead guilty because I --

Q Yes.

A Because I had brought him down there.

Q You pleaded guilty?

A Yes, sir.

Q You were charged with a felony, weren't you?

A No, misdemeanor.

Q You are saying in Virginia possession or obtaining Preludin is a misdemeanor?

A Yes.

MR. POLLAK: I am going to object to this, your Honor.

THE COURT: I will sustain the objection.

A They charge him --

THE COURT: No, no.

A They charge him --

Q In any event, you pleaded giulty, is that correct?

A Yes, to a misdemeanor.

Q I see.

But there was somebody else along with you, is that correct?

A They charge him a felony.

Q What was his name?

A All I know his name was Butch.

Q Butch?

A Yeah.

Q Where was he from?

A Washington.

Q What was his last name?

A All I know is Butch. He been around by the beer garden where I been at.

Q Did he go by any other name?

A All I know is Butch.

Q And you and he went down to Richmond, Virginia?

A Yes, sir.

Q Alone?

A Yes, sir.

Q What was the purpose of going there?

A He say he had to go to the doctor and he couldn't get prescription. Hweigh about 300 pounds.

Q He had to get a prescription?

A He couldn't get it in Washington. They were all out of Preludin.

Q They were all out of Preludin in Washington?

A They were then.

Q You went down to Richmond?

A We went down to Richmond.

Q Why were you with him?

A He told me to drive him. He didn't have a car and he asked me for a ride.

Q Why did you go to Richmond as opposed to anywhere else?

A He wanted to go down there. I don't know. You could ask him if he was here.

Q He asked you to go there?

A Yes, he asked me to take him down.

Q So you drove down to Richmond?

A Yeah.

Q And you went to a drugstore?

A Yeah.

Q And did you have a prescription?

A He had a prescription.

Q He had a prescription. And you went in the store and you bought the Preludin?

A No. He gave a prescription to the doctor so the doctor could fill it and the doctor gave it to him. I was waiting outside and the detectives grabbed him, and I went over and asked him what was wrong and they charged him with a felony and charge me with a misdemeanor.

Q What was the misdemeanor they charged you with?

A All I know was a misdemeanor.

Q What was the felony they charged him with?

MR. ROSENBERG: Objection, if your Honor please.

THE COURT: Sustained.

Q Who was the doctor you went to in Richmond?

MR. ROSENBERG: Objection.

MR. POLLAK: I will object.

THE COURT: I will sustain it.

Q You say, Mr. Salley, that you refreshed your recollection after calling your sister over the lunch hour that you made another trip to New Jersey from Washington?

A I made a trip up the Jersey Turnpike somewhere.

Q And you stayed at a Howard Johnson's?

A Yeah.

Q You are sure about that now?

A Yeah, me and a girl stayed overnight.

Q And which Howard Johnson's was it?

A All of them look alike to me.

Q And this was in October of 1972?

A Right after my father died. My father died October the 25th.

Q 1972?

A Yeah.

Q Do you recall me asking you this morning about seeing me here in this courthouse in October of 1973? Do you recall that?

A Yeah, I remember now.

Q And you recall saying you recall that because it was near the time that your father died?

A Yeah.

Q When did your father die, 1972 or 1973?

A '72.

Q '72? You are sure about that now?

A Definitely. I think Mr. Pollak got the papers.

Q And some time after October 25, 1972 you took a trip up here?

A Yeah.

Q And you stayed at a Howard Johnson's in New Jersey?

A Yeah, somewhere on the Turnpike.

Q You don't recall which Howard Johnson's it was?

A They all look alike to me.

Q So now are you telling this jury that your signature does appear on Government's Exhibit 107 for identification?

A It look like it.

Q That is your signature or it isn't your signature?

A It look like it.

Q Do you recall today saying it was not your signature, this morning?

A Well, you were showing me so many pieces of paper at one time it's hard to look at them all.

Q You say now it is your signature or it isn't your signature or it just looks like it?

A It may be. It look like it.

Q You heard a fair amount of testimony, did you not, from Mr. Pannirello and Mr. Provitera about a Howard Johnson's on Route 46?

A Yeah, I heard him say about Route 46.

Q And you heard Tennessee Dawson talk about a Howard Johnson on Route 46 in New Jersey?

A Yes, I heard him talk about it.

Q Did you ever stay at that Howard Johnson's?

A I don't know how to get on Route 46?

A You are saying you never stood at the Howard Johnson's on Route 46?

A I don't know. They all look alike to me. I don't know which one I stayed at.

Q How long did you stay?

A I stayed about two nights.

Q Two nights?

A Yeah..

Q And how soon after October 25th was it that you stayed there?

A I really couldn't tell you.

Q Was it a week, a day?

A Well, back there I was in a shock, my father died, I really can't tell you.

Q You don't know whether it was a month or a week, you couldn't tell the difference?

A Couldn't tell the difference.

Q Where were you going, by the way?

A Just out to my father's. I was in shock and I want to get away from Washington

Q You just wanted to drive somewhere, is that right?

A Right.

Q So you spent the night?

A Yes.

Q Did you go back to Washington after you spent two nights?

A Yes.

Q Did you see anybody while you were up here?

A No.

Q Did you go to New York at all?

A No.

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Q Were you alone, or you say you were with a girl?

A I had a girl.

Q You are separated from your wife, is that correct?

A Yeah.

Q Do you recall the name of the girl?

A What?

Q Do you recall the name of the girl?

A Yeah. She dead now. She died right before Christmas.

Q Do you recall her name?

A Yes.

Q What is her name?

A Dolores Jackson.

Q Excuse me?

A Her name Dolores Jackson. She died right before Christmas of this year.

MR. PHILLIPS: I have no further questions, your Honor.

MR. POLLAK: I have just one, your Honor.

REDIRECT EXAMINATION

BY MR. POLLAK:

Q When you talked about Butch -- I think someone else would ask you if I don't -- you didn't mean Butch Pugliese or Butch Mamone?

A I don't know them. Just by seeing them around here.

Q Neither of those were the Butch --

A I'm talking about a black Butch.

Q The next question I was going to ask you was perhaps the Judge's son. I guess it wasn't.

A I am talking about black Butch.

MR. SUNDEN: May I inquire?

MR. PHILLIPS: I have just one question.

RECROSS EXAMINATION

BY MR. PHILLIPS:

Q Mr. Salley, do you recall me asking you in October when you were in my office with Agent Nolan and Agent Moore if you had ever stopped in New Jersey when you came up here with Mr. Robinson?

A Yeah.

Q You told me you never stopped in New Jersey then, is that right?

A To get gas.

Q Did I ask you whether you had ever stopped in New Jersey at any time?

A Yeah.

Q And you said no, is that correct?

A To get gas. You know, you going to get gas,

you travel from Washington to New York, you got to stop and get gas. If you don't you got a bad car.

Q I did ask you, did I not, if you had ever stopped and spent the night in New Jersey?

A You asked me that.

Q Yes. You recall me asking you that?

A Yes.

Q And your answer to me, do you recall that?

A Yeah.

Q What was that?

A It was no, because I was upset and everything. I was here by myself, me and my wife.

MR. PHILLIPS: No further questions.

REDIRECT EXAMINATION

BY MR. POLLAK:

Q When Mr. Phillips asked you whether you stopped in Jersey, he asked you whether you stopped in Jersey with Warren Robinson, didn't he?

A Yeah.

Q And when you told him no, that was truthful, wasn't it?

A Yes, sir.

Q Just one more thing, sir.

I show you these two papers, and I ask that that

be marked.

xx (Defendant Salley's Exhibits B and C, respectively, marked for identification.)

Q Mr. Salley, would you take a look at B and C for identification.

Q Are those papers that you originally gave to your former lawyer, my predecessor in this case, Mr. Murray Segal?

A Yes, sir.

Q Can you tell me what they are?

A This the one that the funeral home made up and these the ones that my stepmother had made up for all the children.

Q These are papers relating to the death of your father, right?

A Yes, sir.

Q Death announcements?

A Yes, sir.

Q And what is the date that appears on those as the date of death?

A October 20, 1972.

Q Take another look, sir.

A That is the day he died. Let me see the date he was buried.

Tuesday, October the 24th, right over here.

And this one got Wednesday, October 25, 1972, at 11.00 a.m. That was the time of the funeral.

MR. POLLAK: I would offer B and C in evidence at this time, your Honor.

MR. PHILLIPS: I would just object on the ground of relevancy, your Honor.

THE COURT: I will let them in.

Does anybody else have any objection?

MR. SUNDEN: Yes.

THE COURT: Do you object to the memorial cards?

MR. SUNDEN: No, your Honor.

MR. POLLAK: I have nothing further, your Honor, However, I would like the jury to be shown the discharge papers and the memorial cards.

THE COURT: All right. I think we have some more cross-examination.

xx (Defendant Salley's Exhibits B and C, respectively, received in evidence.)

RECROSS EXAMINATION

BY MR. SUNDEN:

Q Mr. Salley, you referred to a 300-pound person who you described a s a black Butch. That is not -- that wasn't Mr. William Alonzo, was it?

A No. He's smaller than me.

THE COURT: All right. Does anybody else want to inquire?

All right, step down, Mr. Salley.

(Witness excused.)

MR. POLLAK: That is defendant Salley's case. Defendant Salley rests.

THE COURT: All right.

Mr. Lopez, I understand you have one exhibit you have not ruled on, is that correct?

MR. LOPEZ: Yes, your Honor.

I would like to offer defendant Di Napoli's Exhibit P into evidence.

MR. PHILLIPS: No objection, your Honor.

THE COURT: All right. Ladies and gentlemen, I am not going to ask you to take a look at this right now. As perhaps you can see from the outside, it is a New York City map covering Manhattan, Brooklyn, Bronx, Queens and Staten Island.

When the time comes, if it comes, you will have an opportunity to peruse all of the exhibits, including the map, but I don't think there is any necessity for you to see it right now. I am sure Mr. Lopez would want you to take a look at particular things and other defendants

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may wish you to take a look at other things, the government may wish you to take a look at still other things. Wait for that. All right?

MR. LOPEZ: Thank you, your Honor.

xx (Defendant Di Napoli's Exhibit P received in evidence.)

THE COURT: Mr. Ellis, I believe that you also have an exhibit which I have yet to rule on.

MR. ELLIS: I believe you ruled on it, your Honor, but we didn't inform --

THE COURT: Not in the presence of the jury.

MR. ELLIS: Yes, your Honor.

I have 10 pages of Santini Bros. records which establish in May, 1973, the Mamone family moved from the Bronx to their home in Fort Lauderdale, Florida, and at this time I would like to offer those records as Mamone Exhibit A.

THE COURT: All right. They will be marked.

I understand the government objects on the grounds of relevancy.

MR. CURRAN: That's correct, your Honor. We concede the documents being business entries and object on the grounds of irrelevancy.

THE COURT: But you do concede the business

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entries. Okay, I will permit it in.

xx (Defendant Mamone's Exhibit A received in evidence.)

MR. ELLIS: Your Honor, at this time the defendant Mamone rests.

THE COURT: All right, ladies and gentlemen. You know that I am totally and completely unpredictable, particularly about when we take an afternoon break, but we are going to do it right now.

MR. PANZER: Your Honor, might I just be heard on that briefly? I have a problem with one witness that has to leave shortly and I just want to put him on for about five minutes.

THE COURT: I want you to come up here with the reporter and I want to see Mr. Sunden and Mr. Phillips, also.

(At the side bar.)

THE COURT: Here is my problem, gentlemen:

Mr. Sunden indicated he wanted to be heard prior to the time you put on any defense whatsever.

I gather the fact that your client, Mr. Sunden, and Mr. Panzer's client appear to be half-brothers or half-brother and sister or something like that --

MR. SUNDEN: Right.

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THE COURT: I don't know. You feel it might prejudice you?

MR. SUNDEN: Yes.

THE COURT: To have --

MR. SUNDEN: I really didn't want to make this whole statement in front of the jury, which, if anything, calls attention --

THE COURT: I didn't want anything at all. Do you object?

Who is this executive director, a character witness?

MR. PANZER: Yes, by the name of Wingate. Then we can stop.

MR. PHILLIPS: This is the head of the Urban League?

MR. PANZER: Yes.

MR. PHILLIPS: And if she is going to testify about her character in the business community, I am going to object to it.

MR. PANZER: You can object to it.

MR. PHILLIPS: It is our position,your Honor, that it has tobe reputation in the community where she lives.

THE COURT: I understand what your position is.

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(In open court.)

THE COURT: I am so unpredictable that I can't even predict myself, so we are going to stay here and have the testimony of one witness.

MR. PANZER: Thank you, your Honor.

THE COURT: Mr. Panzer, will you call your witness.

MR. PANZER: Mr. Wingate.

Mrs. Ware calls Mr. Wingate on behalf of the defense.

L I V I N G S T O N L. W I N G A T E, called as a witness on behalf of the defendant Ware, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PANZER:

Q Mr. Wingate, how old are you?

A 58.

Q Mr. Wingate, what is your profession?

A I'm a lawyer, but I'm working for the past several years as the director of various volunteer agencies, currently the New York Urban League.

Q How long have you been an attorney?

A Since 1949.

Q And how long have you been working in your

capacity as executive director of the Urban League?

A Since May, 1968.

Q Will you tell the jury some of the functions and duties of the Urban League?

A The Urban League is a volunteer organization which is basically designed to alleviate and address itself to a target population in the five boroughs of the City of New York in the areas of housing, health, education and employment.

Q And how long have you been director of the Urban League, sir?

A Since May, 1968, which would be approximately six years. Six years this May.

Q And does the Urban League sponsor any particular event in the fall?

A Well, we --

Q The fall of every year?

A Yes. We sponsor several events. Among the events we sponsor in the fall is the Whitney M. Young Football Game, which is held at Yankee Stadium every year, and that has been going on now since 1968.

Q What is done with the funds that you receive as a result of that?

MR. PHILLIPS: Your Honor, I think this is all very interesting, but I think at some point --

THE COURT: All right. The objection is sustained.

Q Mr. Wingate, do you know a woman by the name of Hattie Ware?

A Yes, I do.

Q And how long have you known Hattie Ware?

A I've known Hattie Ware since she came into the employ of the Urban League in the latter part of 1968, shortly after I came on.

Q And how long did she work at the Urban League?

A She worked for the Urban League, oh, until -- oh, '68 through -- almost through 1972.

Q What were her duties at the Urban League?

A She served in various capacities. Originally she was administrative assistant to the comptroller of the Urban League. She served in thatcapacity for about a year and a half or more.

Then she became administrative assistant to the deputy executive director. She served in that capacity, oh, I guess for a couple of years. And then she served as administrative assistant to a program director for the New York Urban League.

Q And did she handle large sums of money?

A Well, she particularly handled large sums of

money when she worked in the capacity of administrative assistant to the comptroller, particularly for the football game.

Q When you say large sums of money, will you give us an amount?

A Well, the football game grossed --

MR. PHILLIPS: Your Honor, I object to this as irrelevant.

THE COURT: No, I will allow it.

Go ahead.

A The football game grossed over $450,000. Of that sum, the New York Urban League collected in checks or cash sums exceeding two hundred and fifty or three hundred thousand dollars, and we had to deposit this money every evening in the comptroller's office and Mrs.Ware was the custodian.

Q So she had possession of those large sums of money?

A Yes, she had possession of those moneys.

Q And you never found any of that money missing, right?

A No.

Q She was completely trustworthy in that respect, is that true?

A Completely.

Q While she was working in the Urban League, did you have occasion to discuss with other members of the Urban League her reputation?

A Well,as one of the key employees, the answer would be yes.

Q Could you tell us the names of the people that you discussed her reputation with?

THE COURT: Counsel, I don't think that is necessary. He has indicated he has talked to other people. There is no need to know who they are.

MR. PANZER: Your Honor, I am just anticipating Mr. Phillips' question.

Q Mr. Wingate, what was her reputation during the period that she worked for the Urban League?

MR. PHILLIPS: Your Honor,I object on the grounds that I stated at the side bar.

THE COURT: I will permit it.

Go ahead.

A Her reputation for truth, her reputation for truth was exceptionally good. It was excellent.

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Q What about being a law-abiding citizen?

A Her reputation as a law-abiding citizen was excellent throughout her period with the Urban League.

Q Mr. Wingate, have you heard since that time that Hattie Dare was arrested on the case that is before this Court?

A I both heard and read of the arrest.

Q Did you have occasion to discuss her reputation with people at the Urban League after this happened?

A Of course, the matter was widely discussed in the Urban League. So the answer is yes.

Q And what was her reputation after you found out about this particular fact?

MR. PHILLIPS: Objection.

THE COURT: Sustained.

Q What was the reaction at the Urban League?

MR. PHILLIPS: Objection, your Honor.

THE COURT: Sustained. Mr. Wingate, among the people with whom you discussed this situation at the Urban League did anyone change their opinion?

THE WITNESS: They did, your Honor. Did anyone give me their opinion?

THE COURT: No, no. Did anyone change.

THE WITNESS: Oh, no, your Honor.

THE COURT: All right, Mr. Panzer.

MR. PANZER: I have no further questions.

THE COURT: Mr. Phillips.

CROSS EXAMINATION

BY MR. PHILLIPS:

Q I take it from what you said, Mr. Wingate, you discussed her reputation as a law-abiding citizen with people who worked for the Urban League, is that correct?

A That's right, your Honor -- that's right, counsel.

Q Thank you. In any event, did you ever discuss her reputation for being a law-abiding citizen with people who live -- first of all,do you know anybody who lives at 1380 University Avenue?

A No, I don't.

Q So I take it then you never discussed her reputation as a law-abiding citizen with anybody who lives at 1380 University Avenue?

A Not at that address, no. I don't recall any specific address.

Q Do you know anything about the facts of this case, Mr. Wingate?

A What I have heard, what I read in the newspapers.

MR. FISHER: Objection, if your Honor please, to the word "facts." There are charges.

THE COURT: Charges is what is being referred to.

Q I take it, Mr. Wingate, when she handled large sums of money or the large sums of money that she handled you keep written records of, is that correct?

A Oh, yes.

Q The Urban League keeps very carefuly records of that money?

A We must, yes.

MR. PHILLIPS: I have nothing further, your Honor.

THE COURT: All right, Mr. Wingate.

MR. PANZER: Your Honor, I have aquestion.

REDIRECT EXAMINATION

BY MR. PANZER:

Q Mr. Wingate, did you discuss her reputation with anybody else other than the people at the Urban League?

A Well, yes. The case was fairly widely discussed among thepeople who knew Miss Ware, the business men in the community, the banks that we deal with, that she dealt with and I dealt with.

Q And what was their opinion after you discussed that with them?

A Well, it was one of shock and surprise that Miss Ware -- Miss Ware worked in a bank after leaving the League and it was shock and surprise. I would be questioned about my attitude about the matter and they would express theirs.

THE COURT: Mr. Wingate, hold on. We can't take your feelings.

Q What were their feelings about the matter?

MR. PHILLIPS: Objection, your Honor.

MR. PANZER: I think Mr. Phillips opened the door on this, your Honor.

THE COURT: I will permit it. Don't argue.

Q What were their feelings on the matter?

A Their feeling was one of surprise that she would be involved in this kind of matter because it was inconsistent with her reputation as they knew her.

THE COURT: All right.

Q Did they feel this was some kind of mistake?

MR. PHILLIPS: Objection.

THE COURT: Oh, no, no. Absolutely not. Sustained.

MR. PANZER: No further questions.

THE COURT: All right. Step down.

THE WITNESS: Thank you.

(Witness excused.)

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THE COURT: All right. Time out for a cigarette break.

(Jury left the courtroom.)

THE COURT: Mr. Sunden, do you want to do it here or do you want to do it in the robing room?

MR. SUNDEN: In the robing room.

THE COURT: All right. Mrs. Rosner, here or in the robing room?

In the robing room.

Mr. Phillips, Mr. Curran.

(In the robing room.)

THE COURT: You are first.

MRS. ROSNER: Your Honor, I have reviewed your edition of 476 Fed. 2d and it either differs substantially from mine or at least from my memory of the case.

The situation in Nathan was one where the witness was questioned about an old conviction of the defendant's and not, as I thought I recollected, the witness's own conviction. But I would point out, your Honor, that I think a stronger analysis can be made for the exclusion of an old conviction in the case of a witness, for this reason:

Where the defendant himself is being questioned

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other criminal activities reduced to the form of a conviction frequently are admitted for probative purposes apart from impeachment and in fact the rule in this circuit is very broad concerning the admissiblity of evidence of other crimes.

However, in the case of a witness the only possible reason for admitting a prior conviction is for impeachment value, and I think in that situation the Puco case and its rational applies, and that is that where a conviction is old, and here the age is far beyond the 20-year cutoff in Puco, this is a 30-year-old conviction, it just serves no relevant purpose because it bears no relationship to the witness's credibility to permit that type of impeachment.

So I submit that although Nathan is not on all fours in extending the rule to impeachment of a witness, I think the underlying rational of Puco and Nathan all point in the direction of excluding impeachment where the age of the conviction is such that it just cannot be said to shed any light on the witness's credibility, and I think certainly a 30-year-old conviction falls in that categorywithin the holding in Puco.

MR. PHILLIPS: Your Honor, may we ask Mrs. Rosner who the witness is and what he is going to testify

to in substance.

MRS. ROSNER: You will find out in five minutes, Mr. Phillips.

MR. PHILLIPS: It's hard to be able to respond to argument and have your Honor rule if we don't know the answer to that question.

MRS. ROSNER: Does your Honor desire the information to make a ruling?

THE COURT: How else can I make a ruling?

MRS. ROSNER: The witness was the bartender in Diane's Bar, which was spoken of in the testimony of the witness Primrose Cadman. He was convicted in 1943 for an assault. I don't believe a weapon was involved, your Honor. That is my information.

He has no other felony convictions and --

MR. PHILLIPS: Is he going to testify as a character witness for Mr. Inglese?

MRS. ROSNER: No.

MR. PHILLIPS: Or is he going to testify as an alibi witness for Mr. Inglese, is he going to testify that Primrose Cadman ever came to Diane's Bar?

MRS. ROSNER: I don't think those questions are legitimately directed to a Puco-type inquiry. He is going to testify to the events in Diane's Bar during the

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period when Miss Cadman indicated she was there. I am certainly not putting him on as a character witness.

THE COURT: All right. You want to be heard?

MR. PHILLIPS: Mr. Curran might want to be heard.

MR. CURRAN: Your Honor, I can see already where we are going to get into the conviction question, I think, because I believe that bartenders have to get some sort of clearance either from the local ABC Board or from the SLA, and I believe -- and I stress the word "believe" -- that if the man had a felony conviction he might not have gotten that clearance, unless he got it by lying.

It seems to me there are areas there where I could see this is a problem already. Again, I think that under the general rule we are entitled to ask the question, regardless of what the person testifies to. I am not conceding anything by discussing specifics, but I can think of other questions I am already formulating in my mind to ask this gentleman.

I don't know where it would go, but it seems to me it could well come up to go to his truthfulness in this and his general truthfulness.

THE COURT: All right, I understand.

MRS. ROSNER: I am not sure whether Diane's Bar

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was licensed by the SLA or whether it was just a littleclub that was sort of operating de feacto. So I don't know whether there would be any question about his credibility because of lying to get some kind of work permit. But I would inquire about that if the Court deems it relevant.

MR. CURRAN: Then I would like probably to go into that in some detail, if it wasn't a licensed premises.

THE COURT: All right. Let me roll it around in my head.

MR. PHILLIPS: Your Honor, I have one thing. Are you finished?

MRS. ROSNER: I think I would be calling him as the next witness who will be testifying in court, your Honor. I just note that.

THE COURT: Let me take care of the other two here.

MR. PHILLIPS: Something has just come up since I have been in the robing room. I noticed that today's Post has glaring headlines stating that 16 narcotics cops face charges.

Usually this type of motion comes from defense counsel. I understand that the jury is sequestered, but I would ask your Honor to ask the marshal to take special efforts to see that this type of publicity is not brought

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to the attention of any of the jurors.

THE COURT: All right. Go ahead.

MR. SUNDEN: Briefly, Judge, the situation is this: I have spoken to Mr. Panzer. At the present time William Alonzo, I don't anticipate submitting a case on his behalf. However, just in general preparation, and after speaking to Mr. Panzer, I have some idea of the case that Mr. Panzer intends to present on behalf of Hattie Ware.

Now, there are two sources of concern here. The first is that, as your Honor knows, it is a matter of fact that Mr. Alonzo has previously been convicted of narcotics offenses.

THE COURT: I didn't know that.

MR. SUNDEN: This situation arose at an earlier time in the case. We had a side bar.

The fact is that Mr. Alonzo has previously been convicted of narcotics cases and has served penitentiary time. Moreover, he was released from the penitentiary I believe some time in November, 1971, or within that time period.

In fact, we had a side bar about this with regard to the testimony of Harry Pannirello and the prosecution conceded at that time that that conviction and that incarceration was not relevant to this alleged conspiracy or prosecution here.

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THE COURT: It is coming back to me.

MR. SUNDEN: So the prosecution to that extent has taken a position that it is irrelevant.

I am concerned on two counts. Firstly, I am vitally concerned that evidence of that conviction and that incarceration not come out in evidence here indirectly. I anticipate that Mr. Alonzo will not take the stand, and that is a critical reason why not.

My first application is to request, much as I previously requested of the prosecution regarding testimony of Pannirello and Provitera, that both sides, that is, Mr. Panzer and his witnesses and Mr. Phillips and his cross examination and any rebuttal witnesses, be directed not to go into any questions which might elicit a response which would reveal that conviction and incarceration and that all their witnesses be so directed to stay away from that area. That is my first request.

THE COURT: I would be astounded if Mr. Panzer is going into that area.

MR. PANZER: No, I don't expect to touch that area.

MR. SUNDEN: I also am concerned with regard to the cross examination of Mrs. Ware, that somehow that might come out.

MR. PANZER: I haven't finally decided whether I am going to put Mrs. Ware on the stand yet.

MR. SUNDEN: I am sorry. I understood you definitely were.

All of this application is based on the anticipation that she is going to take the stand.

THE COURT: One way or the other, nobody is going to get into it wittingly, at least.

MR. SUNDEN: Yes. I must say, Mr. Phillips, I am very concerned about your cross examination.

MR. PHILLIPS: I can represent I am not going to cross examine Mrs. Ware about his having been incarcerated for whatever it was. I am going to ask her questions regarding her brother, Butch Ware, but to none of the questions I ask will a responsive answer include the fact that he was convicted and went to jail.

MR. SUNDEN: The second thing is I also make the application -- and again this is in anticipation, in case Mrs. Ware does take the stand -- I make the application at this time for relief under Rule 14, that is, the rule concerning prejudicial joinder, on the grounds that I believe, as I understand -- and again here I have to anticipate -- as I understand, what the case presented by Mrs. Ware will include will constitute the type of

prejudice that is contemplated in this rule.

Now, the defendant Alonzo made a motion for severance at the outset of this case and I think perhaps properly your Honor denied that motion at that time, having no familiarity with the facts. But as they unfold here I think situations can arise wherein it becomes clear that two parties being tried together, and particularly in a conspiracy case like this, do amount -- and the facts as they unfold -- do amount to a prejudicial joinder here.

I am somewhat rue to go into what I understand the full facts to be because I don't want to reveal anything unnecessarily to the prosecution standing here or something like that, but at this time I make that application. I ask your Honor deem that it be an on-going application for the defendant William Alonzo from this point on of a declaration of a mistrial at his instance so there will be no double jeopardy and a granting of a motion for severance.

This is preliminary, but if the facts unfold it is something that might create the great prejudice of inconsistent defenses here that might virtually force the defendant Alonzo to take the stand, not because of something the prosecution came up with, but because of

something that comes out on the defendant Hattie Ware's case.

I just want to keynote your Honor at this time as to my thinking on this. If such a situation arises I would have the appropriate citations in support of that position.

THE COURT: You want the motion to be deemed made should something happen, is that it?

MR. SUNDEN: Yes, and for your Honor to consider it an on-going motion at this point. Because it is such a fluid situation, I think highly inflammatory material might come out as to Alonzo, who does not anticipate taking the stand at this point.

THE COURT: All right.

MR. SUNDEN: Thank you.

MRS. ROSNER: Concerning the defense witness whom I desire to call, your Honor, I inquired of him whether Diane's was a licensed bar, licensed by the SLA. He said it was. However, he was not carried on the payroll and did not have whatever it is that a bartender has to get to work.

Now, I have no objection to the government asking him whether he was licensed as a bartender, but on the representation that he was not so licensed I would object

to the government asking him whether he lied in applying for such a license in denying a 30-year-old conviction, because there was no such application.

MR. PHILLIPS: Then he couldn't have lied.

MRS. ROSNER: That's right. That's why I would object to trying to use the conviction or to impeach him, because there was no application.

THE COURT: I hear you.

Off the record.

(Discussion off the record.)

MR. LOPEZ: Your Honor, just a precautionary advice to your Honor. There is an inmate at the Federal House of Detention here in New York City by the name of Blasingame. It's been reported to me that he has been seen in the parole office and the warden's office and he attempts to communicate with all the prisoners on this case. Of course, they have refused to speak with him.

We merely make this notation for whatever it is worth. They have asked us to make this notation for the record.

THE COURT: It doesn't mean anything.

MR. LOPEZ: It doesn't mean anything at this point.

THE COURT: All right.

(Recess.)

(In the robing room.)

MR. PANZER: Your Honor, I have been looking over Government's Exhibit 70, which is a picture of Hattie Ware and two other individuals. I turned it over and I noticed on the back there is writing. I understand that that writing was placed there by an agent of the government and that wasn't originally on the picture when it was originally seized.

I am moving that that be removed from that picture before it is shown to the jury.

MR. PHILLIPS: The writing was on the photograph when it was offered, your Honor, and it does depict accurately the testimony of the witness as to who the individuals were. There was no objection to the receipt in evidence of this and the other photographs.

THE COURT: I recognize it, but the question is if the thing goes into the jury room during the deliberations should the writing be there, isn't that correct?

MR. PANZER: Right.

THE COURT: Take it out.

MR. PHILLIPS: You want it done with tape, pen?

THE COURT: I don't care how you do it. Just get it off.

(In open court; jury not present.)

THE COURT: Mrs. Rosner, you had an application in connection with a witness, whether the government would be able to cross examine in connection with a felony convictin which I understand was about 30 years old?

MRS. ROSNER: That's correct, your Honor.

THE COURT: The answer to that is no, they will not be permitted to go into it.

I recognize the ordinary rule, but I believe it to be a discretionary one, and in my discretion I say no, they cannot cross examine.

MRS. ROSNER: You Honor, may I just leave the room to inform the witness of that fact?

THE COURT: Yes. Before you go, I have a problem.

Mr. Panzer, are you continuing your case right now?

MR. PANZER: Yes. I have one other witness that I would like to get out, your Honor.

THE COURT: All right. I assume then your witness comes, is that it?

(Pause.)

MRS. ROSNER: I will hold my witness in abeyance, your Honor.

THE COURT: All right. Let's bring back the jury.

MR. WARNER: Your Honor, I have s small procedural point. I was looking over the transcript of yesterday's testimony. On page 4155 there is an error in the transcript of Mr. Cermak's testimony. Would your Honor like me to bring this to the court's attention tomorrow morning in chambers or --

THE COURT: Bring it up right now.

Go ahead, get the jury.

(Pause.)

(Jury present.)

THE COURT: All right, Mr. Panzer. Call your next witness.

MR. PANZER: Call Patricia Williams.

PATRICIA WILLIAMS, called as a witness by defendant Hattie Ware, being first duly sworn, testified as follows:

MR. PANZER: May I proceed, your Honor?

THE COURT: Yes, please do.

DIRECT EXAMINATION

BY MR. PANZER:

Q Is that Miss or Mrs. Williams?

A Miss Williams.

Q Miss Williams, could you tell us your occupation, please?

A I am a registered nurse.

Q And where are you employed?

A I work for the Department of Public Health.

Q Are you licensed by the State of New York?

A Yes, I am.

Q How long have you been a nurse?

A Ten years.

Q Do you know an individual by the name of Hattie Ware?

A Yes, I do.

Q Do you see Hattie Ware in the courtroom?

A Yes, I do.

Q Would you point her out, please?

A Over there.

Q How long have you known Hattie Ware?

THE COURT: The record will indicate that the witness has identified the defendant Hattie Ware.

A Six years.

MR. PANZER: Thank you, your Honor.

Q How long have you known Hattie Ware?

A Six years.

Q Did there come a time when you lived at 1380 University Avenue in the Bronx?

A Yes, I did.

Q What was that period of time?

A From 1968 to 1971.

t4agta

Q And did Hattie Ware live at 1380 University Avenue at that time?

A Yes, she did.

Q Did there come a time during 1971 that you went to a night club with Hattie Ware?

A Yes.

Q Do you remember when that was?

A March, '71. It was my birthday.

Q And did you go to see a specific performance that night?

A Yes, The Temptations were playing.

Q And that was the occasion of you going to that night club, is that correct?

A Yes.

Q I show you what has been marked Exhibit 69 in evidence, which is a photograph which the government introduced on their direct case. Would you look at it, please.

Have you looked at it?

A Yes, I have.

Q Are you one of the persons in that picture?

A Yes.

Q Is Hattie Ware one of the persons in that picture?

A Yes, she is.

Q Do you know the other people in that picture?

A Bun and Basil Hansen.

Q And who else?

A The other people I don't know.

Q Can you tell us how you came to be at that night club back in March of 1971?

A Hattie took me out for my birthday.

Q And how much time did you spend in that night club?

A Oh, I really can't recall. I would say about

two hours, three hours, something like that.

Q There is another couple in that picture besides yourself, Basil, Estelle and Hattie, isn't there?

A Yes, there is.

Q And when for the first time did you meet that other couple?

A They came to the table that night.

Q Was that the first time that you met them?

A Yes, briefly.

Q And was that the only time that you met them?

A Yes.

Q On this particular evening was everybody having a good time?

A Wonderful.

Q Did you have a lot to drink?

A Yes.

Q And the performance was well, was good?

A Fantastic.

Q Miss Williams, I show you what has been marked as Exhibit 70 in evidence and ask you to look at it.

Do you recognize any of the people in that picture?

A Yes, the same three people that were at the

table.

Q Is Hattie in that picture?

A Yes, she is.

Q And is Estelle in that picture?

A Yes, she is.

Q Do you know how that picture came about?

A Well, we were all taking pictures and he probably asked them to take a picture, we always --

MR. PHILLIPS: Objection to what he probably did, your Honor.

MR. PANZER: I wish he would let the witness answer, your Honor.

THE COURT: Objection as to what someone probably did.

Please, Miss Williams, just tell us, to the best of your recollection, what did happen. All right?

A The gentleman asked them to take a picture with him.

Q And that is how that picture came about?

A Yes.

Q You know Basil and Estelle Hansen, is that correct?

A Yes, I do.

Q And is Estelle Hansen related to Hattie Ware?

A It's her niece.

Q And do you know whether or not Estelle or Basil had a key to Hattie Ware's apartment?

A I don't know about Basil. Estelle did.

Q She had a key to her apartment?

A Yes.

Q And do you know, by the way, where Estelle lived in 1972 or 1973?

A She lived in 1380 University.

Q And she also had a key to Hattie Ware's apartment?

A Yes, and she had her own apartment.

Q Did there come a time when she moved away from University Avenue?

A Yes.

Q Do you know where she moved to?

A To Wyandanch, I believe.

Q Where is that, upstate New York?

A Yes.

Q And at that time did she have a key to Hattie Ware's apartment?

A Yes, she did.

Q By the way, do you know where Hattie works now?

A Federal Carver. She is secretary to the president.

Q Do you know whether Hattie has any children?

A Yes, she has one adopted son.

Q During the time when you were living at 1380 University Avenue did you have occasion to discuss Hattie's reputation with other people in the community?

A Yes, I did.

Q And what was her reputation in that community?

A She had a very good reputation.

Q And since that time have you learned that Hattie has been involved in this case?

A Yes, I have.

Q And have you discussed her reputation with members of the community?

A Yes.

Q And what is her reputation now?

A It remains the same, that we don't really believe she is involved in it.

MR. PHILLIPS: Objection to that, your Honor.

THE COURT: Yes.

MR. PHILLIPS: I ask that it be stricken.

THE COURT: Ladies and gentlemen of the jury, it will be stricken. Just ignore, if you would, please, ladies and gentlemen, the last comment.

Q I show you what has been marked as Exhibit 74 and ask you to look at it.

Have you done that?

A Yes, I have.

Q Do you recognize the people in that picture?

A Hattie's in the picture.

Q Do you recognize the gentleman in that picture?

A I think I've seen -- yes.

Q Do you know who it is?

A I don't remember his name.

Q Could he be related to Mr. Hansen? Does that refresh your recollection?

A Yes, it is his brother.

MR. PANZER: I have no further questions, your Honor.

THE COURT: All right, Mr. Phillips.

CROSS EXAMINATION

BY MR. PHILLIPS:

Q Miss Williams, are you a close personal friend of Hattie Ware's?

A Yes, I am.

Q Have been for some time?

A Yes, I have.

Q How long?

A Six years.

Q And how long did you live at 1380 University Avenue?

A Three years. About three and a half.

Q Did you know any of the other tenants in the building besides Hattie Ware?

A Yes. My mother still lives there and friends.

Q How about Al Greene, did you know him?

A Yes, I do.

Q Did he live on the seventh floor?

A Yes.

Q What years did he live there, do you recall?

A I don't know.

Q Where was he working, do you know?

A I don't know.

Q Did you used to see Basil in Hattie Ware's apartment at 1380 University Avenue?

A I have.

Q See Bunny there too?

A Yes.

Q Does Hattie Ware have a brother?

A Yes.

Q Butch Ware?

A Yes.

Q And did you see him there too?

A Yes.

Q He stayed there for a while, didn't he?

A Yes, he did.

Q Stayed in Hattie's apartment?

A Yes,he did.

Q What was the name of that night club that you were talking about?

A The Copa.

Q The Copacabana?

A The Copacabana.

Q In Manhattan?

A Yes.

Q On 60th Street?

A I'm not sure of the address.

Q But it's near Fifth Avenue, isn't it?

A I'm not sure. I don't know.

Q Who was paying for the drinks that night?

A Well, Hattie was treating me.

Q Paying cash?

A Yes, I think so.

Q Was she paying for the other people's drinks at the table?

A I don't remember seeing the bill transacted.

Q This other couple that you referred to that came over to the table, were you introduced to them?

A Yes.

Q And by what name were they introduced to you?

A I don't remember.

Q Was the gentleman introduced as Georgie?

A I don't remember.

Q How about Butch?

A I don't remember.

Q I am trying to refresh your recollection.

How about Mr. Pugliese?

A I don't know.

Q Were they introduced as Mr. and Mrs.?

A I don't remember.

Q I take it, Miss Williams, that the couple that you are referring to are the ones in the far left of Government's Exhibit 69 in evidence, is that correct, the two, man and woman, on the far left?

A Yes.

Q Is it your testimony that that picture was

taken at the Copacabana?

A Yes, it was.

Q And that Government's Exhibit 70 in evidence was also taken at the Copacabana?

A Yes, it was.

Q And that is Hattie and Bunny in Government's Exhibit 70, isn't it?

A Yes, that's Hattie and Bunny.

Q Is this also a picture of Basil, Government's Exhibit 67 in evidence?

A Yes, that's Basil.

Q How about Government's Exhibit 68 in evidence and 72 in evidence, are they of Bunny and Basil as well?

A Yes, they are.

Q Where were Bunny and Basil living when you knew them?

A Well, Bunny was living with Hattie when I first met them.

Q And then Bunny and Basil started living together somewhere?

A Yes.

Q Where was that?

A I don't know.

Q Was it on West 225th Street?

A I don't know.

Q Was it 150 West 225th Street? Does that ring a bell?

A I have never been to their house?

Q Were they living in an apartment that Hattie was paying the rent for?

A I don't know.

Q Do you know whether Hattie got an apartment for them?

A I don't know.

Q Where are they now, do you know?

A No.

Q Do you have any idea where they are?

A No, I don't.

MR. PHILLIPS: That is all I have, your Honor.

MR. PANZER: I have no further questions.

MR. SUNDEN: I have a few questions.

THE COURT: All right, Mr. Sunden.

CROSS EXAMINATION

BY MR. SUNDEN:

Q Miss Williams, my name is Gary Sunden. I am the attorney for William Alonzo, Mrs. Ware's brother.

You stated that you are a close friend of Mrs. Ware, is that correct?

A Yes, I am.

Q And you are aware of the fact that Hattie Ware, Mrs. Ware, Ware is her married name, is that correct?

A Yes, it is.

Q And you state that you are also aware of the fact that she has a brother, is that correct?

A Yes, I am.

Q And what is the name -- and you know --

MR. SUNDEN: Withdrawn.

Q And her brother's name, you know him as Butch, is that correct?

A Yes.

Q And is his true name -- do you know his true name to be William Alonzo and his nickname as Butch?

A Right.

Q Thank you.

MR. SUNDEN: No further questions.

THE COURT: All right. Step down.

(Witness excused.)

MR. PANZER: Your Honor, Miss Ware rests.

THE COURT: All right.

MRS. ROSNER: Your Honor, on behalf of

the defendant Inglese I would call Joseph Zimbardo.

MR. CURRAN: Your Honor, before the witness is sworn, might Mrs. Rosner and I approach the bench?

THE COURT: Yes.

Where is the witness?

MRS. ROSNER: He is in the hall, your Honor, outside the courtroom.

THE COURT: All right.

Mr. Clerk, go and get the witness.

(At the side bar.)

MR. CURRAN: Your Honor, in an excess of caution and without in any way casting any reflection on what Mrs. Rosner says based on her conversations with the witness, I would like to make extra sure that this man has no other convictions than the one that Mrs. Rosner has mentioned to your Honor.

MRS. ROSNER: No other felony convictions.

MR. CURRAN: Well, now, you see, there are certain situations in which misdemeanor convictions, depending on what the convictions are, are admissible, and to make doubly sure, your Honor, I would ask that your Honor examine this witness out of the presence of the jury as to his criminal record, if I can't in light of your

Honor's rule, whether he has any others.

I have had experiences before in cases where --

THE COURT: Do you have a rap sheet?

MR. CURRAN: No, sir, I don't have a rap sheet. He is a witness. I didn't know his name until two minutes ago.

MRS. ROSNER: Your Honor, I will represent to the court that the felony conviction was as explained to the court.

The witness, in addition, in 1950 had a disorderly conduct conviction, but I can't think of any theory that that is admissible and Mr. Curran --

MR. CURRAN: I don't know of any.

Mrs. Rosner knows. I am not questioning what Mrs. Rosner says because that is what he told her.

MRS. ROSNER: That is correct.

MR. CURRAN: In experience with witnesses and others, sometimes witnesses tend to forget or when they are under oath they say different things, and I think that I have a right to make sure, independent of Mrs. Rosner's statement, which she gave unsworn, that this man had no other convictions.

MRS. ROSNER: I have a simple expedient whi ch

I would suggest.

I think Mr. Curran probably with some promptness can obtain the man's yellow sheet having his name and address.

MR. CURRAN: I have a quicker way, Mrs. Rosner, if I may. Out of the presence of the jury, Judge Duffy will simply ask the man if he has any prior convictions of crime of any kind and I will stipulate if there are just the two you say that is the end. I think that is quicker than running around looking for a rap sheet. I will accept that.

MRS. ROSNER: I never saw it done and I don't understand Mr. Curran's --

THE COURT: He has a reason, I am sure, tucked away back in his head and I don't want you to be surprised.

MRS. ROSNER: Okay.

(In open court.)

THE COURT: Ladies and gentlemen, you know I always am unpredictable and I am going to be unpredictable today also.

I would appreciate it if you would wait for just a few minutes in the jury room. Don't light up your cigarettes because you might have to put

them out right away.

(The jury left the courtroom.)

THE COURT: All right, Mr. Clerk, swear in the witness, please.

J O S E P H Z I M B A R D O, called as a witness by the defendant Inglese, being first duly sworn, testified as follows:

THE COURT: Go ahead.

DIRECT EXAMINATION

BY MRS. ROSNER:

Q Have you ever been convicted of a felony, Mr. Zimbardo?

A Yes.

Q When was that?

A 1942.

Q What was the crime for which you were convicted?

A Second degree assault.

Q Was that here in the State of New York?

A Yes.

Q Apart from that felony conviction have you ever been convicted of a felony on any other occasion?

A No.

Q Have you ever been convicted of a misdemeanor?

A Yes.

Q When was that?

A 1952.

Q And what was that misdemeanor?

A Disorderly conduct.

Q Was that also here in the State of New York?

A Yes.

Q To your knowledge as you sit here now, were you ever convicted of any other felony or misdemeanor offense in New York State or anywhere else?

A No.

MRS. ROSNER: Any questions, Mr. Curran?

MR. CURRAN: I have no questions.

MRS. ROSNER: Thank you, sir. Just remain seated, Mr. Zimbardo.

THE COURT: All right. Bring back the jury.

MRS. ROSNER: Your Honor, should the jury be told that the witness has already been sworn.

THE COURT: I will take care of it. I just want to make sure there are no more surprises.

(Jury present.)

THE COURT: Ladies and gentlemen, the witness has already been sworn. His name is Joseph Zimbardo,

Z-i-m-b-a-r-d-o.

Mrs. Rosner, you may inquire.

MRS. ROSNER: Thank you, Judge.

BY MRS. ROSNER:

Q Mr. Zimbardo, where do you reside?

A 21 Michigan.

Q Let me suggest you move forward and speak right into the microphone so everybody can hear you?

A 26 Michigan.

Q Where is that?

A Long Beach, New York.

Q How long have you lived there?

A About eight months.

Q Where did you live before that?

A 346 East 106th.

Q Are you married, sir?

A Yes.

Q How many years?

A Nineteen years.

Q Have any children?

A Three.

Q Direct your attention, if you will, to a period of time commencing in December, 1968.

Were you employed at that time?

A Yes.

Q Where were you working?

A In a bar.

Q What is the name of the bar?

A Diane's bar.

4B

Q What is the location of that bar?

A 2034 Second Avenue.

Q What is the cross street on Second Avenue where that is located?

A 104th, 105th.

Q And during this period of time beginning with December, 1968, what were your duties there?

A Bartended at night, about 5.30 till about 1, 2 o'clock,

Q And how many days a week did you work there?

A Six.

Q Which week day did you not work?

A Sunday.

Q How was your record of attendance while you were employed there?

A Pretty good.

Q By the way, what was the overall period of time that you worked at Diane's Bar, from when to when?

A About five years.

Q Was Diane's Bar a regular licensed bar, that is, one licensed by the State Liquor Authority, if you know?

A Yes, yes.

Q Do you know whether your employment was carried off or on the books of Diane's Bar? Did they report

your employment, if you know?

A No.

Q In other words, you were paid off the books?

A Yes.

Q What was your salary there?

A $10 a night.

Q And was there --

A Plus tips.

Q Excuse me?

A Plus tips

Q During this period of time, beginning about December, 1968, do you recollect ever seeing a young woman come into Diane's Bar with clothing?

A Yes.

Q Can you describe her for the jury as you remember her?

A Skinny girl, about 5 feet, English, I believe she was.

Q Do you remember what color hair she had?

A Brown.

Q And when you say English, is there something about her that caused you to say she was English?

A Yes. She had an accent.

Q Beginning about this period of time, December,

'68, did she come into Diane's Bar?

A Once in a while.

Q Can you estimate for the jury as best your recollect approximately how frequently you saw her there?

A Maybe once, twice a week, skip a week, you know, on and off.

Q That is your best recollection?

A Yes.

Q Would you say that it was possible, sir, that she could have been there every night in the week when you worked there?

MR. CURRAN: Objection.

A No.

MR. CURRAN: At least to the form of the question.

THE COURT: It doesn't have to be changed. I will permit it. The answer is no.

MRS. ROSNER: I am afraid I didn't get to finish the question which I had an improper form anyway.

Q Mr. Zimbardo, do you recollect whether particularly during the summer of 1969 whether this girl came into Diane's Bar every night or almost every night?

A No.

Q Are you sure about that, sir?

A Yes. She didn't come every night.

Q By the way, Mr. Zimbardo, do you recollect whether she or did you ever see her go to any other stores or establishments in the neighborhood of Diane's Bar?

A Well, what she was selling, if she couldn't get rid of it in my bar, she would walk anywhere to sell it?

Q When you say "my bar," were you the owner of Diane's?

A No.

Q Who was the owner of the bar?

A Armando Donato.

Q Will you describe for the jury, sir, what the interior of Diane's Bar looked like during this period, early 1969?

A It's about 12 feet wide, maybe 60 feet long.

Q Can you indicate for us, when you say 12 feet, would you say, Mr. Zimbardo, that the width of the jurybox, the depth of the jurybox, is approximately 12 feet?

A That's about it, yes.

Q So Diane's Bar was quite a narrow place, is that right?

A Yes, yes.

Q And what was the overall depth of the bar?

A From here to the end of the courtroom. About

60 feet, 60 feet, something like that.

Q During this period of time, did you know a fellow named Gigi?

A Yes.

Q Can you look around the courtroom and point that individual out if he is here, Mr. Zimbardo?

A Yes, that fellow behind the man with the beard. That's him (indicating).

MRS. ROSNER: May the record reflect that the witness has pointed to Mr. Inglese.

Q During this period of time, the end of 1968 and early 1969, did you ever see Mr. Inglese at Diane's Bar?

A Yes.

Q And to the best of your recollection, how frequently did you see him there?

A Two, three times a week.

Q On the occasions when he was present there, what would he be doing?

A Drinking.

Q Did you ever see him have any conversation with the English girl whom you described?

A No.

Q Let me stop for a moment before I forget.

By the way, did you ever hear this girl's name?

A No.

Q Never heard he referred to by any name?

A No, no. By the English girl is all I know.

Q Did you ever see Mr. Inglese purchase any of the clothes which she brought into Diane's?

A Yes, yes.

Q And approximately how frequently would you say that occurred?

A Whenever she -- whenever they met. If they met once a week or maybe they skipped a week, but she sold to anybody in that bar.

Q Let me see if I understand your testimony.

Are you saying that on all the occasions when you saw her at Diane's when Mr. Inglese was also there he purchased something from her?

A No, no, not unless he liked the stuff, no.

Q Why don't you tell us in your own words how frequently, as best you recollect, Mr. Inglese purchased something from her?

A Well, it's hard to say. Once a week, maybe skip two weeks. If he bumped into her again maybe he bought one more.

Q Did you ever hear him say to her that she should sell him everything that she had and not approach

other people who might be in the bar?

A No.

Q Is it a fact, sir, that frequently other people who were in the bar purchased things from her?

A Yes.

Q Can you give us a figure, to your best recollection, approximately how many times altogether would you say that you saw Mr. Inglese purchase something from her?

A Maybe five times, six times.

Q On these occasions, do you have a recollection, or let me put it this way, did you ever see Mr. Inglese pay her for the items of clothing which he bought from her?

A Yes.

Q And was the form of that payment -- let me withdraw that.

How much would you say was the most that was paid her by Mr. Inglese in your view?

A Sixty to a hundred dollars.

Q Sixty --

A Sixty to a hundred dollars.

Q Is it your recollection it was never more than that amount?

A No.

Q Do you recollect hearing them discuss the price of various items of clothing that he was interested in purchasing?

A Yes. The price would vary, $30, 40, you know what I mean.

Q Going back to what Diane's Bar looked like, was there an enclosure or room of some type at the back of the bar?

A No, just two bathrooms at the back of the bar.

Q There were two bathrooms?

A Yes.

Q I take it there were doorways in the back of the bar?

A There was a kitchen, but it had an open front.

Q Let us stay with the bathrooms for a minute.

There were doorways in the back of the bar leading into the bathrooms, is that right?

A Yes.

Q In addition in the back of the bar there was a kitchen?

A Yes.

Q What was the entranceway or doorway to that kitchen like?

A Just an open frame.

Q Was there a door on the frame?

A No.

Q So that at all times when you were in the bar you could look into the kitchen, is that right?

A Yes, yes.

Q Did you also, during this period of time, Mr. Zimbardo, know an individual named Joe Crow?

A Yes.

Q Did you know him by any other name?

A No.

Q Knew him only as Joe Crow?

A Yes.

Q Were there occasions when he, also, was in Diane's Bar?

A Yes.

Q When he arrived, did he arrive accompanied by Mr. Inglese?

A Not all the time, no.

Q Are you saying, then, that sometimes they came together, sometimes they didn't?

A Yes.

Q Okay.

Did Joe Crow, to your knowledge, have access to the kitchen of Diane's Bar?

A No.

Q Did he have permission, sir, if you know, to go into the kitchen?

A No.

Q Do you know whether he stored anything there?

A No.

Q Is your answer that you don't know or that he didn't store anything?

A I don't think he did. I would see him.

Q In other words, to the best of your knowledge, he never stored anything there?

A No.

Q On the occasions when this English girl was in Diane's Bar, did you ever see this fellow Joe Crow give her a package of any kind?

A No.

Q Did you ever see him go to the kitchen or the bathrooms, anywhere in the rear of the bar, and return with a package which he handed to her?

A No.

Q Did you ever see the person known to you as Gigi hand this young English girl a package of any kind?

A No.

Q By the way, do you now know that Gigi's true and correct name is Louis Inglese?

A Yes, now I know.

Q And did you learn that after the events that we are talking about?

A Right.

Q Is it fair to state, sir, that if people were speaking in a normal conversational tone of voice in Diane's Bar, that from your position at the bar you would hear their conversation from any point in the bar?

A Yes.

Q Did you ever hear either the person known to you as Joe Crow or Mr. Inglese say to this English girl anything in words or in substance like, "Let me know how the goods are"?

A No.

Q Did you ever hear her say to either of these individuals, either the person known to you as Joe Crow or Mr. Inglese, "It was nice," or any words to that effect?

A No.

Q Did you ever see anything but currency go from Mr. Inglese to this young English girl?

A That's right, that's all I seen.

Q Mr. Zimbardo, apart from this young English girl, did any other individuals ever come into Diane's with stolen clothing?

A Yes.

Q Approximately how many, can you estimate?

A Quite a few, quite a few.

MRS. ROSNER: I have no further questions at this time, your Honor.

CROSS EXAMINATION

BY MR. CURRAN:

Q Mr. Zimbardo, would you tell us again the exact dates of your employment off the books as a bartender at Diane's Bar?

A About 1967 till about 1973, beginning of 1973.

Q What month did you start working there in 1967?

A I think it was June.

Q Are you sure it was June?

A I am pretty sure it was June.

Q That would be about six years?

A Yes.

Q And you worked there for those six years six nights a week?

A Yes, until near the end, '73, 72, it was a little slow.

Q How many nights a week did you work then?

A About five, you know.

Q And you worked, let us go back, say, from 1969

to 1971, you worked six nights a week?

A Yes.

Q You came in about 5.00 p.m.?

A 5.30 till 1, 2 o'clock, whatever time we closed.

Q And you werepaid $10 a night?

A Plus tips.

Q That would be $60 a week?

A Yes.

Q Plus tips?

A Yes.

Q And did the bar get a pretty good crowd of people going in and out in those years?

A Not too good, not too bad, meidocre.

Q How much would you make in tips on a good night?

A About $15.

Q On a good night?

A Yes.

Q A bad night?

A About $3, sometimes blank.

Q What did you average in 1970?

A 120, 130.

Q In tips?

A No, no, total.

Q Would you describe for us, please, in a little

more detail the layout of Diane's Bar?

A About this wide --

Q Hold it now. Signalling from where you are sitting?

A From here (indicating).

Q The jury rail?

A Yes.

Q To the wall behind the jury?

A Yes.

Q And the length?

A From here to the door.

Q From the end of the jury rail to the back door?

A Yes.

Q That is about --

A That's just how square it was, also.

Q This space?

A Yes.

Q All the way back?

A Right.

Q Where, sir, was the bar?

A I would say from the second row -- the bar was just about as big as this (indicating).

Q "This" being the jurybox?

A I mean, not this wide, you know. This long the

bar, maybe even less.

Q As long as where the jury is sitting?

A Yes.

Q And did it bend around by the window?

A Well, it had a little curve, nothing much of a bend.

Q As you came in the front door --.

A Yes, it had a little -- it wasn't a square bar.

Q There was a bar, it bent a little and then it straightened out and ran toward me, is that it?

A There was a little space from here to here to a window, big window.

Q You worked behind the bar?

A Yes.

Q You were the bartender?

A Yes.

Q Did you also work in the kitchen?

A No. Maybe fast sandwich or something.

Q Was that part of your duty, to get food?

A Well, courtesy.

Q Courtesy?

A Yes.

Q How far back was the kitchen?

A At the end of the bar by the back door, in other

words.

Q By the back door of the courtroom?

A Yes.

Q What was in between the kitchen, which was by the back door of the courtroom, and the bar, which ended about where I am standing?

A Nothing.

Q Wasn't there a table there?

A Oh, there were a few tables in the back, yes.

Q There were a few tables?

A Yes.

Q And the tables were all the way back to the kitchen?

A Yeah, about three tables.

Q And then space, just open space?

A Yeah. It wasn't a very big bar.

Q When you came in the front door, as you came in the door, was the bar on your left?

A Yes.

Q And the corridor would be straight aheadof you, right?

A Yes.

Q To the back?

A Right.

Q And the bathrooms would be on the right in the back?

A Right. One is dead center and one is on the right, bathrooms.

Q And from time to time were people seated at the tables?

A Yes, once in a while.

Q Let us say in the summer of 1969, do you remember that year?

A Yes.

Q You remember the summer of '69?

A I remember a little, yes.

Q I mean as distinguished from the summer of '70 or the summer of '68?

A Yes.

Q How many people would be at the bar at 9, 10 o'clock on an evening?

A I started to say, some nights it would be ten, some nights it would be two.

Q Some nights there would be twenty in the place?

A Yes, occasionally.

Q And your job was to serve drinks?

A Yes.

Q And you did serve drinks?

A Yes.

Q And when there were people in the bar, I assume they would talk to each other, wouldn't they?

A Yes.

Q And you talked to the patrons at the bar while you were giving them a drink?

A Yes.

Q That was a regular thing?

A Yes, yes.

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Q Did you ever have a situation where you had fifteen or twenty people in the bar and there was just one person speaking?

A Not too often.

Q That wouldn't happen, would it?

A Not too often.

Q Mostly men go into the bar?

A Yes.

Q And they would discuss sports and other things?

A Yes.

Q And sometimes the talk would get loud, wouldn't it?

A Yes.

Q Arguments would go on once in a while?

A Right, right.

Q It was a regular thing?

A Yes.

Q No question about that?

A No.

Q This little English girl who you say had brown hair and was skinny, she was a narcotics addict, wasn't she?

A I didn't know.

Q You didn't know that?

A No.

Q You ever seen a narcotics addict?

A Yes.

MRS. ROSNER: I am going to object to that, your Honor.

THE COURT: All right. I don't think it is going any further.

Q Did you ever discuss her with the defendant Inglese?

A No.

Q You never talked --

A I had no reason to.

Q Other people you say came in and sold clothes there?

A Yes. Sold anything.

Q Stolen things?

A Yes.

Q You knew they were stolen?

A No. Half the time we tried to chase them out, but they would just keep coming in.

Q Was it your job to try to police the area?

A Tried to, yes.

Q Did you try real hard?

A Yes, sometimes.

Q Sometimes not?

A Sometimes too busy.

Q You were too busy making drinks and serving people?

A Yes.

Q Sometimes you were too busy to see that they were even there?

A Who was there?

Q The people selling clothes.

A No, I could see them.

Q You were too busy to chase them out?

A I would holler, but I couldn't go around the bar.

Q Sometimes you were too busy to chase them out?

A Yes.

Q Were there a lot of people in there selling a lot of things?

A No,not all the time.

Q Sometimes did you chase them out?

A Yes.

Q Did you ever chase the English girl out?

A No, she was too pleasant. She would walk in and walk out.

Q She was too pleasant?

A Yes.

Q Who else did she sell clothes to there, other people besides the defendant Inglese?

A Yes.

Q Did you see her sell them?

A Yes.

Q Did you ever buy any?

A No.

Q Would you participate in the conversations that she would have with the people --

A No, no.

Q You were busy tending bar, right?

A Yes.

Q Weren't there times when she sold clothes to people and you were busy tending bar and you didn't know what she sold or what happened?

A Possible.

Q That's very possible, isn't it?

A Well, could be.

Q It could be?

A Yes.

Q No question that it could be?

A Well, it could slip.

Q It could slip?

A You know, it could slip by me.

Q Was it your assignment to watch what she did?

A No, it wasn't my assignment to watch what she did, no.

Q Your assignment was to sell the drinks at the bar?

A Yes.

Q By the way, do you know a fellow named Finnegan?

A Yes.

Q Do you see him in the courtroom?

A Yes.

Q Is that Finnegan?

A Yes.

MR. CURRAN: Your Honor, may the record show the witness has identified the defendant Donato Christiano?

THE COURT: Yes.

Q Did you ever see him in Diane's Bar?

A Once in a while.

Q In 1969?

A Yes. Never came too often.

Q 1970?

A Yes.

Q Did you ever see him with Joe Crow having a drink,

talking?

A Yes, once in a while.

Q And with the defendant Inglese once in a while?

A Yes.

Q Did they appear to be friendly?

A Yes.

Q No question about that?

A No.

Q Do you remember any other people who came into the bar with clothes besides the little English girl?

A Yes.

Q Do you know their names?

A No, not offhand, no.

Q Could you describe any of them?

A Well, sure.

Q And what they sold?

A Sold clothes.

Q Who did they sell clothes to?

A Anybody that was in the bar.

Q Do you know how much they received for the clothes?

A Yes. You know, they were a little cheaper than the English girl.

Q How do you know that? Did the people who bought

the clothes tell you later?

A Yes.

Q That is how you knew about it, isn't it?

A That's right.

Q They would tell you after the person left, "I got a good deal for $30," something like that?

A Yes, "This is cheap stuff, this is good."

Q But that is the way you found out about it, isn't it?

A Well, I could hear a little talking.

Q But not all the time?

A No, not all the time.

Q did you have another job during this period of time?

A No.

Q This was your sole source of income?

A Yes.

Q No other income from any other source?

A No.

Q Strictly the $10 and the tips?

A Well, I get a pension.

Q You have a pension?

A Yes.

Q Are you retired?

A No, a disabled pension.

Q From Service?

A Yes, sir.

MR. CURRAN: Would your Honor bear with me one moment, please.

THE COURT: Sure.

(Pause.)

Q Incidentally, Mr. Zimbardo, I ask you to look around the courtroom here and tell us whether you recognize anyone else as having been seen in Diane's Bar when you were the bartender there.

MR. SIEGAL: Object to it. It's immaterial. I might have been there myself.

MR. CURRAN: Your Honor, I will --

A No.

THE COURT: He said no. You are off the hook, Mr. Siegal.

Q Do you know whether narcotics, specifically, heroin, was ever sold there?

A No.

Q You don't know or it was not?

A Not that I know of.

Q You don't know.

A No.

Q Mr. Zimbardo, in the physical description of the bar that you have given us, between the end of the bar and the kitchen there are only tables, is that right?

A Yes.

Q And you could see right through from the bar to the kitchen?

A Yes.

Q Was there any sort of obstruction of any kind running the entire length of that bar from the front door outside of the bar to the very back of the building?

A No.

MRS. ROSNER: Your Honor, I am going to object. I am not sure I understand the question.

THE COURT: I was about to ask if I could have it rephrased too.

MR. CURRAN: I will try, your Honor. I apologize.

THE COURT: All right.

Q From the front door of the bar, just coming in the front door, you have in front of you, as I understand your testimony, the bar on your left and a corridor where customers would stand going down, right?

A Yes.

Q Beyond that point where the bar ended, which

would be maybe 20 feet down --

A Yes.

Q -- you have past that some tables?

A Right.

Q And then you have beyond the tables the kitchen?

A Right.

Q What is beyond the kitchen?

A The back yard.

Q Is there a door that goes out of the kitchen into the back?

A No, no. A window.

Q So there is no exit from the back of the bar?

A No.

Q To any place?

A No.

Q Now, my question to you, sir, was other than the tables was there any sort of obstruction of the view by way of a piece of a wall or a partition or anything running the whole length of the bar?

A No.

Q And you are certain of that?

A Yes.

Q And that situation was true from 1967 until '73?

A Yes.

Q As far as you recall?

A Yes.

Q You testified that you saw a fellow named Joe Crow there with the defendant Inglese from time to time?

A Yes.

Q I think you also testified that Joe Crow did not have access to the kitchen. Is that your testimony?

A Yes. Nobody did.

Q No one did?

A No.

Q You did?

A Yes.

Q Did anybody else?

A Unless the next bartender, the day bartender.

Q How about the owner?

A Yes.

Q Did the defendant Inglese have access?

A No.

Q Did you ever see him in the kitchen?

A No.

Q You are certain of that?

A Yes.

Q Did you ever see Joe Crow in the kitchen?

A No.

Q Did you ever see either Joe Crow or the defendant Inglese at a table?

A Might have been, yes, could have been.

Q You saw them there, didn't you?

A Yes.

Q Did you ever see Joe Crow purchase clothes from the skinny English girl?

A Not that I recall, no.

Q Did he ever tell you that he had?

A No.

Q He never did?

A No.

Q When did you first see the skinny English girl in the bar?

A Maybe December. I really don't remember what month.

Q December of what year?

A '68. I don't know.

Q Are you certain it was '68?

A Well, I don't remember the year exactly, but I remember seeing the girl.

Q You testified rather precisely on direct examination.

MRS. ROSNER: I am going to object to that,

your Honor.

THE COURT: Yes. Don't argue.

Q You say it's December but you are not sure of the year now?

A No. Well, I can't be that positive of the year, but I believe it's '68.

Q You believe it's '68?

A Yes.

Q That is the first time you saw her?

A Yes.

Q In the bar?

A Yes.

Q For how long a period of time after that did you see her in the bar?

A I say on and off she came maybe six months, something like that.

Q Up to about June of '69?

A June, July.

Q Maybe July of '69?

A Yes, something like that.

Q In that period?

A Yes.

Q No question about that?

A No.

Q I think you also testified on direct examination that she sold clothes in other bars?

A Anywhere outside.

Q Did you see her do that?

A Well, sometimes I stood outside I watched.

Q Sometimes you stood outside --

A In other words, if the place was empty, obviously I stand outside the bar.

Q You mean there would be nobody in the place at all?

A No.

Q And you saw her do what?

A Pass my place, continue going from store to store.

Q You didn't go in after her, did you?

A To other people's stores?

Q Yes.

A No.

Q I think you testified you saw her sell clothes in other places.

A Well, that's what I meant. She went in the store, came out empty-handed.

Q You would watch all of this?

A Well, I had nothing else to do.

Q What time of day or night would this be?

A Maybe 6, 7 o'clock at night.

Q And there was nobody in your place at all?

A Right.

Q Absolutely no one, is that right?

A That's right.

Q What other places did you see her go into?

A The grocery store, could have been down the block, the Chinese place, could have been a few places.

Q As you look through the front door, again, Mr. Zimbardo, what is beyond the bar and the tables, just the kitchen? Is that on the left or does it take up the whole back of the bar?

A It's as wide as the bar in the back because the toilet is on the right-hand side of it.

Q Is the kitchen wide open?

A It's a big doorway and where the doorway ends the stove begins. In other words, here is the stove and this is the end.

Q The stove would be on the left inside the doorway?

A Yes.

Q What is on the right?

A A wall.

Q Beyond the stove what exists?

A The sink.

Q And beyond that the back?

A The back.

Q The kitchen is very small?

A Yes, very small.

MR. CURRAN: One moment, your Honor, please.

(Pause.)

Q Mr. Zimbardo, was this a private club of some sort?

A It was a bar.

Q I think you said on direct examination it was a licensed premises.

A Yes.

Q It was open to the public?

A Yes.

Q In connection with these people, the skinny English girl and the other people who came into the bar selling this merchandise, did you ever make a report to the Police Department about it?

A No.

MR. CURRAN: I have no further questions.

MRS. ROSNER: Just one, your Honor.

REDIRECT EXAMINATION

BY MRS. ROSNER:

Q Mr. Zimbardo, was there more than one English girl that used to come into Diane's?

A No.

MRS. ROSNER: I have no other questions. Thank you, sir.

THE COURT: All right. Does anybody else want to inquire?

The silence is a resounding no.

All right. Step down.

(Witness excused.)

THE COURT: All right, ladies and gentlemen. I am going to send you off for the evening. See you back here at 10 o'clock tomorrow.

(The jury left the courtroom.)

THE COURT: Mrs. Rosner, I assume at this point you rest, is that correct?

MRS. ROSNER: No, your Honor. I may have some documentary evidence tomorrow morning. I am not sure yet. I will know first thing in the morning.

THE COURT: All right. Mr. Rosenbaum, maybe I missed you. Do you rest at this point?

MR. ROSENBAUM: Your Honor, I will actually

know 8:30 this evening. So I can only tell the court tomorrow morning at 10 a.m.

THE COURT: All right. Mr. Fisher, we still have the problem with the stipulation and you want the other things ruled on tomorrow morning. You want it all to go in at once, is that right?

MR. FISHER: If possible. It should only take 10 minutes total.

MR. LOPEZ: Your Honor --

THE COURT: Just let me check and make sure what we have left as far as the defense case is concerned.

To the best of my calculations, the defense case consists of Mrs. Rosner putting in some documentary proof possibly, Mr. Rosenbaum possibly having one witness --

MR. ROSENBAUM: Correct.

THE COURT: -- Mr. Fisher working on a stipulation. If there is no stipulation, possibly he might want to call somebody to testify to those statements.

MR. FISHER: I am sure that won't be necessary. Mr. Phillips said he would stipulate in that regard.

THE COURT: All right. Everybody else has rested.

MR. LOPEZ: Just one stipulation.

THE COURT: All right.

MR. LOPEZ: That's all.

THE COURT: You have one stipulation?

MR. LOPEZ: Yes, your Honor. We agreed on that.

MR. PHILLIPS: I don't know whether you are inquiring as to what the government has left, but I am prepared to address myself to that.

THE COURT: Some kind of a stipulation?

MR. PHILLIPS: We still have as part of our direct case a stipulation which has been agreed upon between Mrs. Rosner, Mr. Siegal and the government. I didn't want to read it during the defendants' case, so as to confuse the jury. However, that is part of the government's direct case.

We have a couple of witnesses in rebuttal. We would like to hand up to your Honor at this time a memorandum of law in support of one of the aspects of our rebuttal case. I served a copy on Mr. Lopez.

THE COURT: All right.

MR. LOPEZ: Your Honor, I have been served with a subpoena to testify for the government. This is the way this case is ending up. I have become a government witness.

Your Honor, I am moving to quash the subpoena. Apparently --

THE COURT: I assume it has something to do with this memorandum of law.

MR. LOPEZ: It has something to do with a phone booth.

MR. PHILLIPS: It does, your Honor.

THE COURT: Let me read the memorandum of law. You are not going to get called first thing in the morning.

MR. LOPEZ: Thank you.

THE COURT: I will let them take you out and horse shed you.

MR. PHILLIPS: May I just state with respect the memorandum of law, your Honor, that it is our intention to offer this evidence one of three ways, either through a stipulation that Mr. Lopez and the government might be able to enter into or through the testimony of Mr. Lopez himself or through the testimony of a James Borden, an inspector for the Drug Enforcement Administration, which is really what the government's memorandum of law is directed at, that is, the admissibility of Mr. Borden's testimony, which would be hearsay as to Mr. DiNapoli.

Now, the government's memorandum of law talks about statements made by Mr. Lopez to the Special Prosecutor's Office, Mr. Nadjari's office, but it actually would be through Mr. Borden that the government would offer this testimony, even though we do not make mention of that fact in the government's memorandum of law. I didn't want the court to be misled by that.

THE COURT: Wait a second.

MR. PHILLIPS: It is our position though that Mr. Lopez when he was talking to Mr. Borden was acting as an agent of Mr. DiNapoli and within the scope of his authority.

THE COURT: I don't know what is going on here, but it sounds wierd. I saw something in calling the U. S. attorney as the first defense witness.

Let me read your memorandum, let me figure out where you are going and if you are going to get there by any one of yourthree possibilities.

Your rebuttal case I assume would take no more than just tomorrow?

MR. P H ILLIPS: Certainly not more than tomorrow. In fact, your Honor, not more than tomorrow morning.

MR. CURRAN: Your Honoor, may we confer

a moment?

THE COURT: With Mr. Phillips' track record on predictions of time I think you better.

MR. FISHER: Your Honor, with regard to that issue, other defendants through their attorneys would have a position that we would like to argue with regard to whether or not Mr. Lopez is going to testify.

MR. ELLIS: Your Honor, I would like to see a copy of the government's memorandum of law. I assume the evidence is being offered against my client.

THE COURT: Why don't you ask Mr. Lopez for it.

MR. CURRAN: We will make a copy for somebody to look at right after the session, your Honor.

THE COURT: All right. I am not holding you to tomorrow morning.

MR. CURRAN: Your Honor, I assume from the way they are talking the defense is going to be on tomorrow morning.

THE COURT: Some stipulations.

MR. CURRAN: I thought there were a couple of witnesses.

THE COURT: There are stipulations and one possible witness.

MR. CURRAN: Then I would think our rebuttal case would end tomorrow, but not tomorrow morning, I don't believe.

THE COURT: All right.

MR. POLLAK: Does that mean we have Saturday off, your Honor?

THE COURT: It will mean Saturday off, yes.

MR. WARNER: Your Honor, is there any 3500 material in regard to any of the rebuttal witnesses

THE COURT: They have some on Mr. Lopez.

No, my guess is there is not. If there is I would assume it will be turned over. I could practically guess at what the witnesses in rebuttal are going to be, and if I can I assume that you are much smarter than I am and you can guess too.

MR. WARNER: Your Honor, I have one further application. Will defense counsel have an opportunity, just as we had an opportunity before the People's direct case, the government's direct case, to interview any witnesses which are going to be called in rebuttal?

THE COURT: No, I am not going to command it. If the government wants to do it, that's up to them.

MR. PANZER: Your Honor, I submitted some

contentions on a theory of defense that I did not pursue and I would like an opportunity to straighten those contentions out.

THE COURT: I will straighten them out for you. I will talk to you about it.

MR. SIEGEL: Your Honor, I am going to have to absent myself tomorrow for the first half hour of court and Mr. Panzer has agreed to cover for me.

THE COURT: All right.

Your client agrees to this?

MR. SIEGEL: Yes.

THE COURT: Very good.

MR. ELLIS: Your Honor, defendant Gamba asked me to inquire as to whether the court heard from Mr. King.

THE COURT: I did not hear from Mr. King. I must admit I didn't even notice that he was missing. I know he went in for a medical I think it was yesterday, but I don't know what happened.

Mr. Lopez, do you know what happened? You offered to cover for him.

MR. LOPEZ: Yes, your Honor, and I haven't heard further. I know he was going to go for a medical checkup yesterday, but I haven't heard further. I

will try to make inquiry.

THE COURT: I will call up myself and see what I can do.

All right. We will see you at 10 o'clock tomorrow.

MR. DOWD: You said Saturday we are not going to work.

THE COURT: Unless there is more testimony to be taken.

(Adjourned to March 1, 1974, at 10:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Henry Salley	4194	4203		
Patricia Williams	4299	4306		
Joseph Zimbardo	4316	4330		

EXHIBIT INDEX

	Identification	In Evidence
Defendant Ceriale		
A		4191
Defendant Salley		
A	4196	4196
B	4270	4271
C	4270	4271
Defendant DiNapoli		
P		4273
Defendant Mamone		
A		4274
Government		
106	4229	
107	4232	
108	4236	
105		4232